

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Forest Guardians,

Plaintiff,

v.

Ann M.. Veneman, Secretary of Agriculture;  
United States Forest Service,

Defendant,

CV 01-138 TUC DCB

**ORDER**

Plaintiff alleges that the Defendant has violated § 7 consultation provisions of the Endangered Species Act (ESA) by failing to observe required protections in carrying out its program for livestock grazing in eleven natural forests in New Mexico and Arizona. Plaintiff asks the Court to order the Defendant, the United States Forest Service (the Forest Service) to enter into formal consultation with the United States Fish and Wildlife Service (the FWS) regarding the impact of grazing permits on threatened or endangered species, or species proposed for listing as threatened or endangered. Defendant has raised numerous defenses, which are unsupported by the law and the administrative record in this case. Plaintiff is not, however, entitled to the relief requested based on its legal assertions and evidentiary record presented to this Court for purposes of the crossmotions now before the Court. Additional briefing is required, pursuant to the directives of the Court as set out in this Order.

**The Endangered Species Act (ESA)**

ESA is the "most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *Tennessee Valley Authority v. Hill (TVA)*, 437 U.S. 153, 180

(60)

1 (1978). "Congress intended endangered species to be afforded the highest of priorities [in order  
2 to] halt and reverse the trend toward species extinction, whatever the cost." *Id.* at 184.

3 ESA creates a system for listing species as threatened or endangered and guarantees  
4 several substantive and procedural duties to protect species once they are listed. 16 U.S.C. §  
5 1533. The ESA's major substantive protections are provided in two sections: 1) § 7 prohibits  
6 federal agencies from jeopardizing the continued existence of listed species, and 2) § 9 prohibits  
7 any "person . . . including federal agencies, state agencies, and private parties . . . from "taking"  
8 individual members of listed species. 16 U.S.C. § 1536(a)(2); 16 U.S.C. § 1538(a)(1)(B); 16  
9 U.S.C. § 1532(13).

10 Section 7 of the ESA requires every federal agency, in consultation with the Secretaries  
11 of the Interior and Commerce,<sup>1</sup> to "insure that any action authorized, funded, or carried out by  
12 such agency (hereinafter, in this section referred to as an "agency action") is not likely to  
13 jeopardize the continued existence of any endangered species or threatened species or result in  
14 the destruction or adverse modification of habitat of such species . . ." 16 U.S.C. § 1536(a)(2).  
15 An agency action "jeopardizes the continued existence" of a threatened or endangered species  
16 when it "reasonably would be expected, directly or indirectly, to reduce appreciably the  
17 likelihood of both the survival and recovery of a listed species in the wild by reducing the  
18 reproduction, numbers or distribution of that species." 50 C.F.R. § 402.02. The proscription  
19 extends to "all activities or programs of any kind," and includes "actions directly or indirectly  
20 causing modifications to the land, water or air." 50 C.F.R. § 402.02. ESA obligations apply  
21 "to all actions in which there is discretionary Federal involvement or control." 50 C.F.R. §  
22 402.03.

23 Responsibility for the substantive determination of whether an agency action is likely or  
24 not to jeopardize the existence of a species is on the agency, in this case the Forest Service.  
25 *Sierra Club v. Froehlke*, 534 F.2d 1289, 1303 (8th Cir. 1976); *Thomas v. Peterson*, 753 F.2d  
26 754, 763 (9<sup>th</sup> Cir. 1985). The Fish and Wildlife Service (the FWS) is responsible for the

---

27  
28 <sup>1</sup>Fish and Wildlife (the FWS) and National Oceanic and Atmospheric Administration.

1 procedural aspects of the consultation process. *Tennessee Valley Authority (TVA)*, 98 S. Ct. at  
2 2295. The procedural requirements must be strictly adhered to because they are designed to  
3 insure agency compliance with the substantive provisions of § 7. *Florida Key Deer v. Stickney*,  
4 864 F. Supp. 1222, 1227 (S.D. Fla. 1994) (citing *Thomas*, 753 F.2d 754).

5 The agency proposing to act must inquire whether any endangered or threatened species  
6 "may be present" in the area of the action. When there exists a chance that such species may  
7 be present, the agency must determine whether or not the action "may affect" the species. See  
8 16 U.S.C. § 1536(c)(1) (agency must conduct a Biological Assessment before construction is  
9 begun); 50 C.F.R. 402.14 (if the proposed agency action is not a "major construction activity,"  
10 the Biological Assessment is not required and the agency may make an independent evaluation  
11 of whether the action may affect a listed species).

12 This step serves as a screening function to determine whether successive steps are  
13 required. *Thomas*, 753 F.2d at 763. The standard for triggering consultation is "very low . . .  
14 any possible effect." *Florida Key Deer*, 864 F. Supp. at 1228-1229; *Romero-Barcelo v. Brown*,  
15 643 F.2d 835 (1<sup>st</sup> Cir. 1981), *rev'd on other grounds Weinberger v. Romero-Barcelo*, 456 U.S.  
16 305 (1982). Only a finding of "no affect" terminates the agency's inquiry.

17 If the answer is affirmative, the agency is required to enter into formal consultation with  
18 the FWS. 50 C.F.R. § 402.14. The regulations provide as follows:

19 (a) Requirement for formal consultation. Each Federal agency  
20 shall review its actions at the earliest possible time to determine  
21 whether any action may affect listed species or critical habitat. If  
22 such a determination is made, formal consultation is required,  
23 except as noted in paragraph (b) of this section. The Director may  
24 request a Federal agency to enter into consultation if he identifies  
25 any action of that agency that may affect listed species or critical  
26 habitat and for which there has been no consultation. When such  
27 a request is made, the Director shall forward to the Federal agency  
28 a written explanation of the basis for the request.

(b) Exceptions. (1) A Federal agency need not initiate formal  
consultation if, as a result of the preparation of a biological  
assessment under § 402.12 or as a result of informal consultation  
with the Service under § 402.13, the Federal agency determines,

1 with the written concurrence of the Director, that the proposed  
 2 action is not likely to adversely affect any listed species or critical  
 habitat.

3 50 C.F.R. § 402.14 (1995).<sup>2</sup>

4 In other words, "If the agency determines its proposed action "may affect" protected  
 5 species or habitat, the agency is required to initiate formal consultation. An agency may avoid  
 6 formal consultation only when it has determined that the proposed action is "not likely to  
 7 adversely affect" the protected species or habitat and the Service [the FWS] concurs with that  
 8 determination." *Tinoqui-Chalola Council of Kitanemuk and Yowlumne Tejonindians v. Dep't*  
 9 *of Energy*, 232 F.3d 1300, 1306 (9<sup>th</sup> Cir. 2000) (emphasis added).

10 A "not likely to adversely affect" finding is appropriate if the effects on a species are *de*  
 11 *minimis*, in that they are "discountable, insignificant, or completely beneficial." ESA  
 12 Consultation Handbook § 3.5 at 3-12. "Insignificant" impacts are those that "never reach the  
 13 scale where take occurs," and that a person would not "be able to meaningfully measure, detect  
 14 or evaluate." *Id.* "Discountable" effects are those extremely unlikely to occur. *Id.* Whereas,  
 15 a "likely to adversely affect" finding, which triggers formal consultation, is the appropriate  
 16 conclusion if any adverse effect to a listed species may occur as a direct or indirect result of a  
 17 proposed action or its interrelated or interdependent actions. *Id.* at 3-13; *see also*,  
 18 (Administrative Record (AR) at V10, D2: Guidance Criteria).

19 Once the agency enters formal consultation, the FWS must issue a biological opinion  
 20 evaluating the nature and extent of the effect of the agency action on the endangered or  
 21 threatened species. *Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1054 n. 8 (9<sup>th</sup> Cir. 1994).  
 22 Where the biological opinion concludes that the proposed action is likely to jeopardize a  
 23 protected species or adversely modify critical habitat, the agency must modify its proposed

---

24  
 25 <sup>2</sup>The words "effect" and "affect" appear to be terms of art when used in relation to ESA and the  
 26 distinction has become blurred between the proper grammatical use of "effect" as a noun to mean  
 27 "result, impression" or used as a verb to mean "to bring about," as compared to the word "affect," which  
 28 is used as a verb to mean "influence or change." William A. Sabin, *The Gregg Reference Manual* at  
 283 (9<sup>th</sup> ed. 2001). Consequently, for the purpose of writing this Order, the Court has used the term as  
 used by the writers of the respective statutes, regulations, agency materials, and cited cases being  
 referenced or relied on by the Court.

1 action. *Natural Resources Defense Council v. Houston*, 146 F.3d 1118, 1125 (9<sup>th</sup> Cir. 1998).  
2 The FWS may suggest "reasonable and prudent alternatives to the proposed action." *American*  
3 *Rivers v. National Marine Fisheries Service*, 126 F.3d 1118, 1122 (9<sup>th</sup> Cir. 1997) (citing 16  
4 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3)).

5 In this way, "the consultation procedure allows the FWS to determine whether the  
6 federal action is likely to jeopardize the survival of a protected species or result in the  
7 destruction or adverse modification of its critical habitat and, if so, to identify reasonable and  
8 prudent alternatives which will avoid the action's unfavorable impacts." *Sierra Club v. Babbitt*,  
9 65 F.3d 1502, 1504 (citing 16 U.S.C. § 1536(b)(3)(A)).

10 Once the agency enters consultation, § 7(d) provides that "the Federal agency . . . shall  
11 not make any irreversible or irretrievable commitment of resources with respect to the agency  
12 action which has the effect of foreclosing the formulation or implementation of any reasonable  
13 and prudent alternative measures . . ." so as not to violate the ESA. *Id.* It is error to not enjoin  
14 activities that "may affect" a protected species on the basis of irreversible or irretrievable  
15 commitment of resources prior to consultation. *Pacific Rivers*, 30 F.3d at 1056. Projects that  
16 are not irreversible or irretrievable commitments of resources may go forward. *Id.*

17 To the extent the agency may not make any irreversible or irretrievable commitment of  
18 resources until there is a "no affect" or "not likely to affect" determination, § 7(d) is a carrot or  
19 stick encouraging agencies to undertake consultation as soon as possible. *Florida Key Deer*,  
20 864 F. Supp. 1234 (early consultation benefits the agency by attaining § 7 compliance so that  
21 there is no delay in implementing an action).

22 Similarly, in the context of both informal and formal consultation, ESA provides that  
23 when new information is developed or becomes available that reveals potential effects on a  
24 listed species or critical habitat not previously considered the action agency has a duty to  
25 reinitiate consultation. 50 C.F.R. § 402.16(b). Reinitiation is also required if the "identified  
26 action is subsequently modified in a manner that causes an effect to the listed species or critical  
27 habitat" that was not previously considered. 50 C.R. R. 402.16(c).  
28

**Factual and Procedural Background of this Case**

In 1997, Plaintiff was a party to another law suit against the Defendant, CV 97-666 TUC JMR (lead); CV 97-2562 PHX SMM (consolidated). Plaintiff was one of several environmental groups that sued the Defendant for failing to consult with the FWS before issuing grazing permits on national forest lands in New Mexico and Arizona. In response to the lawsuit, the Defendant initiated informal consultation with the FWS on over 1000 grazing allotments. Because there were so many delinquent § 7 consultations pending, the Forest Service and the FWS agreed to streamline the informal consultation process by adopting Guidance Criteria. The criteria were adopted in February, 1998. They provided specific criteria for determining whether or not grazing on an allotment was likely or not likely to affect an endangered or threatened species or its habitat. If the criteria was satisfied, the allotment "automatically" received a "no affect" or "not likely to affect" determination from the FWS and formal consultation was not required. Hundreds of ESA § 7 consultations were conducted and "no affect" determinations were rendered pursuant to the February-1998 Guidance Criteria. The plaintiffs then amended the complaint to challenge some of the "no affect" determinations, and Judge Roll decided each claim for each allotment in a 90-page Order issued March 30, 2001.

The agency action analyzed in these many informal consultations was the issuance of ten-year term grazing permits, but the Forest Service and the FWS limited their consultation period to three years, and agreed to reconsult again in three years. (See CV 97-666 TUC JMR, Order filed March 30, 2002 (document 280) at 27.) At the last minute, plaintiffs sought to again amend the complaint to challenge the unlawfulness of the three-year consultation period. Judge Roll held that such an amendment was extremely untimely and denied the request, but he noted "there is a strong argument that the Forest Service and the FWS improperly limited their consultation period to three years, even if the defendant planned to reconsult after the three years expired." (See CV 97-666 TUC JMR, Order filed March 30, 2002 (document 280) at 27.)

The ESA mandates that the agency analyze the entire agency action to ensure that the action is fully protective of endangered species and corresponding habitat. 16 U.S.C. § 1536(b)(3)(A). The scope of the agency action is critical to whether the consultation process



1 considers all the affects of the action and adequately mitigates potential impacts. Courts have  
2 consistently held that a biological opinion has to “analyze the effect of the entire agency  
3 action,” *Conner v. Burford*, 848 F.2d 1441, 1453 (9<sup>th</sup> Cir. 1988), *cert. denied*, *Sun Exploration*  
4 *& Production v. Luganm*, 489 U.S. 1012 (1989) (emphasis added), including all indirect and  
5 cumulative affects of the action on threatened and endangered species, 50 C.F.R. §  
6 402.14(g)(3); 50 C.F.R. § 402.02. An agency may not ignore future aspects of a federal action  
7 by segmenting that action into phases.

8 In *Conner*, the Court held that all phases of oil and gas leasing had to be evaluated for  
9 potential impacts at the leasing stage, even though the final construction phase of the oil and  
10 gas wells was uncertain to occur. *Conner*, 848 F.2d at 1453-1458; *See also*, *North Slope*  
11 *Borough v. Andrus*, 642 F.2d 589, 608 (D.C. Cir. 1980 (agency may not deal exclusively with  
12 one stage of the project).

13 In *Connor*, the FWS issued a biological opinion only with regard to the leasing stage  
14 because it did not have sufficient data to render a comprehensive opinion beyond the initial  
15 leasing phase. Instead of issuing a comprehensive biological opinion, the FWS concluded that  
16 the leasing phase did not jeopardize endangered species. The FWS envisioned an "incremental-  
17 step" consultation approach, with additional biological evaluations prior to subsequent  
18 activities. The court rejected this. The fact that insufficient evidence was available did not  
19 excuse the FWS from rendering a comprehensive opinion on the entire agency action. The  
20 court explained, as follows:

21 Although we recognize that the precise location and extent of future oil and gas  
22 activities were unknown at the time, extensive information about the behavior  
23 and habitat of the species in the areas covered by the leases was available . . . We  
24 agree with appellees that incomplete information about post-leasing activities  
25 does not excuse the failure to comply with the statutory requirement of a  
26 comprehensive biological opinion using the best information available.

27 *Conner*, 848 F.2d at 1453-1454.

28 Judge Roll relied on *Connor*, but under certain limited circumstances some courts have  
allowed limited incremental consultations. For example, in *Swan v. Turner*, 824 F. Supp. 923,  
932 (Mont. 1992), the court allowed the FWS to structure its review incrementally, where the  
biological opinion envisioned future ESA evaluations at the developmental stages of specific

1 projects, and the biological opinion included standards and guidelines to protect species and  
2 habitat.

3 Like the case presented to Judge Roll, this case challenges the validity of site-specific  
4 informal consultations for a large number of specific allotments. Here, the Plaintiff challenges  
5 the use of a three-year consultation period to support the issuance of ten-year term grazing  
6 permits for these allotments. Defendant asserts that this challenge is barred by the doctrine of  
7 res judicata because Plaintiff seeks to relitigate the issue that should have been raised in the  
8 previous action and decided by Judge Roll. The Plaintiff asserts, however, that none of the  
9 allotments addressed by Judge Roll are included in this action, with the exception of the Devil's  
10 Park allotment. Plaintiff dismisses its claim with respect to this allotment.

11 In the ninth circuit there are four elements necessary for a finding of res judicata: 1)  
12 whether rights or interests established in the prior judgment would be destroyed or impaired by  
13 prosecution of the second action; 2) whether substantially the same evidence is presented in the  
14 two actions; 3) whether the two suits involve infringement of the same right; and 4) whether  
15 the two suits arise out of the same transactional nucleus of facts. *Costantini v. Trans World*  
16 *Airlines*, 6821 F.2d 1199, 1201-02 (9<sup>th</sup> Cir. 1982). The party asserting preclusion bears the  
17 burden of showing what was determined by the prior judgment, with clarity and certainty, in  
18 order for the trial court to pinpoint the exact issues previously litigated. *Clark v. Bear Sterns*  
19 *& Co.*, 966 F.2d 1318, 1321 (9<sup>th</sup> Cir. 1992).

20 Here, the lawsuits do not arise from the same transactional nucleus of facts. Each § 7  
21 consultation is unique depending on the terms and conditions of the permit being renewed, the  
22 species residing on the allotment, and the condition of the allotment. The site-specific  
23 challenges included in Plaintiff's Complaint all arise from § 7 consultations conducted after  
24 Judge Roll's decision. Judge Roll's acceptance of the three-year consultation period<sup>3</sup> was  
25 conditioned on the FWS's commitment that it would eventually complete long-term

---

26  
27 <sup>3</sup>It was dicta when Judge Roll wrote that "there is a strong argument that the Forest Service and the  
28 FWS improperly limited their consultation period to three years" because by denying Plaintiff leave to  
amend the Complaint to add this as a claim, he never needed to reach the merits of the argument.



1 consultations, covering a period of ten years. (CV 97-666 TUC JMR, Order filed March 30,  
2 2002 at 4.) The FWS committed to "reinitiate in January 2001 ongoing grazing consultation  
3 on all allotments still stocked with livestock that have not been the subject of a new consultation  
4 as part of the NEPA/ten-year permit issuance process." *Id.* n.6. Just as Judge Roll analyzed  
5 each permit decision on an allotment by allotment basis, this Court will proceed similarly. Each  
6 grazing permit is its own unique nucleus of operative facts. With the exception of the grazing  
7 allotments adjudicated in CV 97-666 TUC JMR, the Court rejects Defendant's assertion of res  
8 judicata. The FWS must defend the rationale for using a three-year consultation period to issue  
9 any ten-year term grazing permit on the allotments challenged in this action.

10 The § 7 consultations required for issuing the ten-year grazing permits were conducted  
11 similarly to the § 7 consultations conducted on the allotments involved in Judge Roll's case.  
12 Following the adoption of the streamlined § 7 consultations pursuant to the February-1998  
13 Guidance Criteria for ongoing grazing, the Forest Service and the FWS adopted another set of  
14 Guidance Criteria in August, 1998, for the purpose of streamlining the ESA consultations  
15 required for purposes of NEPA authorization of the 10-year term permits.

16 The August-1998 Guidance Criteria established specific criteria for determining whether  
17 or not grazing on an allotment is likely or not likely to affect an endangered or threatened  
18 species or its habitat. If the criteria are satisfied, the allotment "automatically" receives a "no  
19 affect" or "not likely to affect" determination from the Forest Service, concurrence from the  
20 FWS, and formal consultation is not required. These are the informal consultations challenged  
21 in this action. The August-1998 Guidance Criteria provide for specific utilization standards to  
22 be in place and for the set standards to be monitored.

23 Plaintiff alleges that for numerous grazing allotments the Defendant has failed to comply  
24 with the monitoring requirements of the August-1998 Guidance Criteria so the "no affect" and  
25 "not likely to affect" determinations are no longer valid. Plaintiff charges that on some  
26 allotments utilization limits have been exceeded. Under both scenarios, Plaintiff argues that the  
27 Defendant must now enter into formal consultation with the FWS.  
28

1 The Defendant argues that in 1995, Congress adopted the Rescissions Act in response  
2 to vast numbers of grazing permits that were expiring and requiring NEPA analysis before they  
3 could be reissued. Under the Rescissions Act, the Defendant is required to reissue any grazing  
4 permit, pursuant to its existing terms, pending NEPA analysis. Defendant argues that under the  
5 Rescission Act of 1995, it lacks discretion to alter the terms and conditions of grazing permits  
6 prior to implementing a permit pursuant to NEPA. ESA obligations only "apply to actions in  
7 which there is discretionary Federal involvement or control." 50 C.F.R. § 402.03.

8 Defendant asserts that only a few, approximately 14 allotments, are covered by NEPA  
9 issued permits. (Defendant's MSJ at 13; Defendant's Response at 2; Defendant's Reply at 13.)  
10 Only these allotments must be managed in compliance with the August-1998 Guidance Criteria.  
11 As to these allotments, the Defendant asserts that the guidance criteria are being satisfied or,  
12 if there is any over use, it is not significant enough to trigger the ESA requirement to renew  
13 consultation.

14 The Defendant asserts that under the Rescissions Act, its only discretion over the terms  
15 and conditions of the remaining grazing permits lies in its year-to-year regulation of grazing  
16 allotments, pursuant to Allotment Management Plans (AMPs) and Allotment Operating Plans  
17 (AOPs). Defendant asserts that its obligation under ESA as to ongoing grazing permits is to  
18 consult with the FWS regarding the annual affects of the permits.

19 In light of these defenses, NEPA and the Rescissions Act of 1995 become relevant to this  
20 Court's determination of whether the Defendant violated the ESA.

21 **National Environmental Policy Act (NEPA)**

22 NEPA is the "basic national charter for protection of the environment." 40 C.F.R. §  
23 1500.1(a). In enacting NEPA, Congress sought to assure that environmental, aesthetic, and  
24 cultural concerns are considered by federal decision-makers by requiring "the Federal  
25 Government to use all practicable means . . . to improve and coordinate Federal planning." 42  
26 U.S.C. § 4331(b).

27 NEPA obligates an agency to consider every significant aspect of the environmental  
28 impact of a proposed action. *Baltimore Gas*, 462 U.S. at 97 (citing *Vermont Yankee Nuclear*

1 *Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978)). It, also,  
2 ensures that the agency will inform the public that it has indeed considered environmental  
3 concerns in its decision-making process. *Id.* (citing *Weinberger v. Catholic Action of Hawaii*,  
4 454 U.S. 139 (1981)).

5 The cornerstone of NEPA is the environmental impact statement (EIS) that an agency  
6 must prepare for all "major Federal actions significantly affecting the quality of the human  
7 environment . . ." 42 U.S.C. § 4332(2)(C). An EIS provides a detailed written statement that  
8 requires in-depth analysis of all potential environmental impacts. 40 C.F.R. § 1502, 1508.11  
9 (emphasis added). If, however, the significance of environmental impacts is unclear, the agency  
10 may prepare an Environmental Assessment (EA), "a concise public document . . . that serves  
11 to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS  
12 or a finding of 'no significant impact (FONSI).'" 40 C.F.R. 1508.9(a). In other words, the EA  
13 is a "rough-cut, low-budget [EIS] designed to show whether a full-fledged [EIS] - - which is  
14 very costly and time-consuming to prepare and has been the kiss of death to many a federal  
15 project - - is necessary." *Cronin v. United States*, 919 F.2d 439, 443 (7<sup>th</sup> Cir. 1990). If the EA  
16 results in a finding of no significant impact, the agency does not need to prepare an EIS. A  
17 FONSI, or "Finding of No Significant Impact," means that the agency has determined its action  
18 will not have a significant effect on the human environment.

19 When an agency decides not to prepare an EIS, the EA must supply a "convincing  
20 statement of reasons" to explain why a project's impacts are insignificant. *Blue Mountains*  
21 *Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9<sup>th</sup> Cir. 1998) (citing *Save the Yaak*,  
22 840 F.2d at 717).

23 The NEPA analysis may be consolidated with the consultation requirements of the ESA,  
24 but compliance with NEPA does not relieve the agency of its obligations under ESA. 50 C.F.R.  
25 § 402.06. The two independent statutory obligations are inextricably linked because an ESA  
26 "no effect" finding may correlate to a NEPA Decision and FONSI. And, if the NEPA analysis  
27 does NOT result in a FONSI then, by correlation, it must be found that the agency action "may  
28 effect" an endangered and/or threatened species, and the agency will be required to enter into

§ 7 consultation under ESA. Accordingly, it is not uncommon to find NEPA and ESA analysis running concurrently, with the ESA consultation being an integral part of the NEPA analysis.

**The Rescissions Act of 1995**

In the 1990s, the Forest Service faced a vast number of grazing permits that were expiring. It became apparent that the Forest Service would be unable to complete all the NEPA analysis in time to reissue the expiring permits. In response to the looming threat that many permits would not be reissued for failure to complete the NEPA review, Congress enacted the Rescissions Act.<sup>4</sup> Rescissions Act, Pub. L. No. 104-19, 109 Stat. 194 (1995).

The Rescissions Act established a temporary exemption from NEPA for those permits that were up for reissuance before the NEPA analysis for that allotment had been completed. The Act directed each National Forest to establish and adhere to a schedule for conducting NEPA reviews on all of the grazing allotments in that Forest. Rescissions Act § 504(a), 109 Stat. 194. It also provided that if a grazing permit came up for reissuance before the time stated in the schedule, the FWS must automatically reissue the permit on its same terms, subject to modification or reissuance upon completion of the NEPA analysis. § 504(b), 109 Stat. 194.

The Rescissions Act provides, in relevant part:

(a) SCHEDULE FOR NEPA COMPLIANCE.--Each National Forest System unit shall establish and adhere to a schedule for the completion of [NEPA] analysis and decisions on all allotments within the National Forest System unit for which NEPA analysis is needed. The schedule shall provide that not more than 20 percent of the allotments shall undergo NEPA analysis and decisions through fiscal year 1996.

(b) REISSUANCE PENDING NEPA COMPLIANCE.--Notwithstanding any other law, term grazing permits which expire or are waived before the NEPA analysis and decision pursuant to the schedule developed by individual Forest Service System units, shall be issued on the same terms and conditions and for the full term of the expired or waived permit.

---

<sup>4</sup>The Rescission Act was tacked on to an appropriations bill: "1995 Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act."

(c) EXPIRED PERMITS.--This section shall only apply if a new term grazing permit has not been issued to replace an expired or waived term grazing permit solely because the analysis required by NEPA and other applicable laws has not been completed and also shall include permits that expired or were waived in 1994 and 1995 before the date of enactment of this Act.

Pub. L. No. 104-19, § 504, 109 Stat. 194, 212-13 (1995).

**Grazing Permits and the ESA, NEPA, and Rescissions Act**

**a. First Amended Complaint**

Count V of the Plaintiff's Complaint charges that the Defendant has failed to comply with the monitoring and utilization provisions established in the August-1998 Guidance Criteria, relied on to satisfy the § 7 consultation requirements for issuance of approximately 40 NEPA authorized ten-year term grazing permits. Consequently, the "no affect" and "not likely to adversely affect" § 7 determinations, which hinge on these Guidance Criteria, are no longer valid. Defendant must, therefore, reinitiate formal consultation regarding issuance of these term grazing permits.

Plaintiff asserts that the scope of the consultation was only three years, rather than for the full ten year term of the grazing permits. This claim is urged in Count VII of the Complaint and involves approximately 56 allotments.

**b. Whether the Rescissions Act divests the Defendant of discretion to modify grazing activities to reflect ESA consultation requirements until the implementation of a NEPA authorized grazing permit.**

Authorizing a grazing permit is considered a site-specific project-level decision, which is made through the issuance of a term grazing permit and allotment management plans. 36 C.F.R. § 222.2. Site specific projects must be carried out consistently with the forest plan (Land and Resource Management Plan (LRMP)) in place when the action was implemented. 16 U.S.C. § 1604(i); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1511-12 (9<sup>th</sup> Cir. 1992). Term grazing permits are typically issued for 10-year periods and are accompanied by Allotment Management Plans (AMPs), which become a part of the permit and set forth specific grazing prescriptions for the use of the allotment. 36 C.F.R. § 222.3(c)(1), (b)(2). AMPs set forth objectives, management requirements, needed improvements, and monitoring and

1 evaluation standards for an allotment. Term grazing permits and AMPs receive site-specific  
2 environmental analyses under NEPA and must be consistent with the LRMP.

3 To implement the term grazing permit, ongoing livestock grazing operations are  
4 monitored and adjusted within the scope of the permit and the AMP through issuance of an  
5 Allotment Operating Plan (AOP) and Allotment Operating Instructions (AOIs). The AOP is  
6 distinct from the AMP because it offers yearly guidance to the permittee based on the range and  
7 resource conditions for that year. The AOP/AOI should "specify dates and areas of use,  
8 utilization standards, maintenance and construction responsibilities for the year." (Defendants'  
9 Motion at 5; Exhibit A: Declaration of Berwyn Brown (Brown Dec.) at ¶ 6.)

10 Defendant argues that NEPA permits have not yet been implemented for the vast  
11 majority of the allotments identified in the Plaintiff's Complaint. Defendant argues that under  
12 the Rescission Act of 1995, it lacks any discretion to amend grazing permit terms until a NEPA  
13 permit is in place. Consequently the August-1998 Guidance Criteria, which apply to the NEPA  
14 issued permits, are not yet effective. Prior to the implementation of the NEPA issued permit,  
15 the Defendant retains its discretion to administer the grazing permits, through annual  
16 instructions to the permittee in the form of an AOP or AOI. Defendant asserts that it has met  
17 its duty to consult under § 7 of the ESA as it relates to this discretionary activity of  
18 administering ongoing grazing permits, (Motion at 34 (citing Administrative Record (AR), Vol.  
19 10, Doc. 3 at 11: Biological Opinion), by consultations with the FWS, pursuant to the February-  
20 1998 Guidance Criteria.

21 Defendant's argument hinges on a distinction being drawn between the issuance of a  
22 NEPA decision authorizing a ten-year term grazing permit for an allotment and implementation  
23 of the permit. Defendant does NOT assert that the NEPA analysis has not been completed, nor  
24 that in relation to this analysis, the § 7 consultation has NOT been done. Instead, Defendant  
25 explains that it takes a long time from when it conducts the NEPA analysis, including the ESA  
26 § 7 consultations, to when it issues the NEPA decision authorizing a ten-year grazing permit,  
27 and it takes even more time to allow for the requisite lengthy appeal process, including  
28 litigation, before it implements a NEPA authorized ten-year term grazing permit.



1 According to Defendant, then it has discretion to modify the terms of the grazing permit  
2 to require compliance with the August-1998 Guidance Criteria. This point is reached as  
3 follows: "[e]ither at the conclusion of the appeals process, which may involve litigation, or the  
4 lapse of an appeals period in which no appeal is filed, **and** the Forest Service implements the  
5 permit by issuing a bill for collection and annual operating instructions to the permittee."  
6 (Forest Service Memorandum in Support of Defendants' Motion for Summary Judgment  
7 (Defendant's Motion) at 9) (emphasis added). "From this period on, "the Forest Service's  
8 approval of grazing is covered by [the] separate ESA Section 7 consultation completed in  
9 conjunction with the NEPA analysis." *Id.* The vast majority of the ten-year grazing permits  
10 at issue here are still winding their way down this long road.

11 In the meantime, the Defendant asserts that ongoing grazing on the allotments is covered  
12 by a § 7 consultation that is conducted pursuant to the February-1998 Guidance Criteria.(D's  
13 M at 34 (citing AR at Vol. 10, Doc. 3: Biological Opinion.) It is the Defendant's opinion that  
14 "as long as it consults on its management of these allotments for a period of at least one year,  
15 it is consulting with the FWS on the entire term of the agency action over which it has  
16 discretion." (D's Motion at 34.) It would, however, be extremely taxing for the Forest Service  
17 and the FWS to consult on a yearly basis so instead they have agreed to a three-year  
18 consultation period, with the Forest Service agreeing to maintain annual operating plans as-is  
19 or more restrictively than provided for in the AOP/AOIs. *Id.* By agreeing to manage the  
20 allotments in this way, the Forest Service and the FWS are able to assess year-to-year affects  
21 of grazing for a three-year permit period. *Id.* (citing AR, Vol. 10, Doc. 3: Biological Opinion  
22 at 11.)

23 Defendant is wrong to interpret the Rescissions Act as authorizing this lengthy  
24 suspension of its discretion to modify grazing permits. "Upon the completion of the scheduled  
25 NEPA analysis and decision for the allotment, *the terms and conditions of existing grazing*  
26 *permits may be modified or re-issued, if necessary to conform to such NEPA analysis."* *Federal*  
27 *Lands Legal Consortium v. United States*, 195 F.3d 1190, 1200 (10<sup>th</sup> Cir. 1999) (quoting Pub.  
28 L. No. 104-19, § 504, 109 Stat 194, 212-213 (1995); the Rescissions Act § 504 (1995))

1 (emphasis in original). The Forest Service may not extend the time for conducting the NEPA  
2 analysis beyond the time set in the adopted schedule. *Greater Yellowstone Coalition v.*  
3 *Bosworth*, 209 F. Supp. 2d 156 (D.C. Cir. 2002). The Rescissions Act only provides a  
4 temporary exemption from the requirements of NEPA. *Id.* at 158.

5 In *Greater Yellowstone*, the Forest Service had set a deadline in its Rescissions Act  
6 schedule of 1998 to complete the environmental analysis and issue the NEPA decision for the  
7 grazing permit on the Horse Butte allotment. The date came and went and the Forest Service  
8 failed to initiate, let alone complete, the NEPA analysis for Horse Butte. The Forest Service  
9 revised the NEPA deadline to a later date, and invoking § 504(b) of the Rescissions Act, it  
10 reissued the permit for the allotment for another 10 years on the same terms. The plaintiff  
11 argued, and the district court agreed, that the original Rescissions Act schedule, published in  
12 1995, set the NEPA compliance deadline and when the deadline passed, the window of  
13 exception closed.

14 The district court reasoned persuasively that it was not the purpose of the Rescissions  
15 Act to relieve permittees entirely of the consequences of not completing its NEPA obligations.  
16 "Rather, the Act creates a temporary exemption from NEPA and relieves the permittees of harsh  
17 consequences only if the Service [FWS] had adopted and adhered to a schedule." *Id.* at 162-163.  
18 The court held that because the agency had not adhered to the schedule, but instead extended  
19 NEPA compliance by several years, the narrow protection afforded the permittees did not apply.  
20 *Id.* Since the Rescission Act did not apply to the permit reissuance for the Horse Butte  
21 allotment, the court concluded that the Forest Service violated NEPA by failing to conduct a  
22 timely NEPA analysis and by issuing the grazing permit without conducting the requisite NEPA  
23 analysis. *Id.* at 163.

24 The court's interpretation in *Greater Yellowstone* was solidly based on the plain language  
25 of the Rescissions Act and bears repeating here:

26 The Rescission Act's plain language indicates without ambiguity that the Service  
27 [FWS] may not amend its § 504(a) schedule for NEPA compliance. As a  
28 fundamental principle of statutory interpretation, a court is required to give effect  
to every word Congress uses in a statute. *Reiter v. Sonotone Corp.*, 442 U.S. 330,  
339, 99 S. Ct. 2326, 60 L.Ed.2d 931 (1979). The word "adhere" can only lend  
itself to one interpretation. Webster's defines "adhere" to mean to "bind oneself

1 to observance (as of a treaty)." *Webster's Third New International Dictionary*  
 2 25-26 (1976). Thus, when Congress commanded the Service [FWS] to "establish  
 and adhere to a schedule" for NEPA compliance, it left no room for the Service  
 [FWS] to later modify that schedule.

3 Indeed, the words "modify" and "amend" are antonyms of the word "adhere." To  
 4 say that one has adhered to a schedule that one has modified, amended and  
 5 changed is to utter a non sequitur or an oxymoron, like a dirty, clean  
 handkerchief.

6 The necessity of adhering to the plain language of a statute is, in one sense, a  
 constitutional necessity. Judicial reluctance to be guided by the plain meaning  
 7 of a statute raises an intolerable risk that the court will substitute its judgment for  
 the legislature's. *Public Citizen v. United States Department of Justice*, 491 U.S.  
 8 440, 468, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989)(Kennedy, J., concurring).  
 Hence, the judiciary restricts itself to the language's plain meaning unless the  
 9 result reached is absurd or violates an easily perceived legislative purpose. *Id.*;  
*Detweiler v. Pena*, 38 F.3d 591, 594-95 (D.C.Cir.1994)(that one might disagree  
 10 with result of application of plain meaning of statute does not render that result  
 absurd). *See also American Water Works Ass'n v. EPA*, 40 F.3d 1266, 1271  
 11 (D.C.Cir.1994); *Nat'l Treasury Employees Union v. Devine*, 733 F.2d 114, 120  
 (D.C.Cir.1984)(plain meaning prevails unless result is absurd or utterly  
 12 inconsistent with legislative purpose).

13 *Id.* at 161-162.

14 In *Greater Yellowstone*, the court suspended grazing on the Horse Butte allotment until  
 15 the NEPA process had been completed and issued a declaratory judgment that the Forest  
 Service had violated NEPA. *Id.* at 163.

17 The Rescissions Act allows the Forest Service to temporarily delay the requisite NEPA  
 18 analysis, until the date specified in the Rescission Act Allotment Schedules, issued February  
 19 1996. (*See attached: Forest Service Allotment Schedules 1996-2010, February 1996*) The  
 20 Schedule for the Southwestern Region, (R-3) is attached and made part of this Order. It reflects  
 21 a 15 year plan for completing approximately 1,093 NEPA allotment analyses and decisions in  
 the Southwestern Region. (*See also Plaintiff's Reply at Ex. 4 & 5.*) The plan reflects that 442  
 22 NEPA decisions would be completed from 1996 to 1998; 310 from 1999 to 2001; 233 from  
 23 2002 to 2004; 88 from 2005 to 2007, and 20 from 2008 to 2010. (*See attached, National*  
 24 *Allotment Schedule Summary, February 8, 1996.*) The schedule identifies approximately 265  
 25 NEPA decisions that should have been completed in the Southwestern Region between 1998  
 26 and 2000. (*See attached Schedule at 7-14.*)  
 27  
 28

The Court finds that the Rescissions Act does not divest the Defendant of its discretion to modify grazing permits outside the window of time afforded it by the Rescissions Act Allotment Schedule. The Rescissions Act does not support the Defendant's assertion that it must wait for some lengthy administrative and judicial appeals time to run prior to modifying a grazing permit after a NEPA decision is issued for an allotment. The Court finds that such extensive delays, many of which extend over several years, are contrary to the intent of the Rescissions Act, which provided a limited and specific time period of exemption from NEPA compliance. The extensive delay in implementing the NEPA decisions is also contrary to regulatory provisions for administrative review and appeal of such final agency decisions.

c. *Whether the Defendant must delay implementing a NEPA authorized grazing permit until administrative and judicial appellate review is concluded.*

A decision to authorize livestock grazing is subject to administrative review under two sections of the Code of Federal Regulations: 36 C.F.R. § 215 et seq. or § 251.80 et seq. Decisions related to issuance, denial, or administration of written instruments to occupy and use National Forest System lands may be appealed by permit holders under 36 C.F.R. § 251, Subpart C, or 36 C.F.R. 215, but cannot be appealed under both regulations. 36 C.F.R. § 215.8(c).

In both instances, after a lengthy public comment period, the responsible Forest Service official, issues a "Decision Notice," which in this instance includes a "Finding of No Significant Impact (FONSI)." This is the agency decision to authorize livestock grazing for the particular allotment. Subsequent to the issuance of the Decision Notice, a permittee may file a request for administrative review. (*See Example: AR, Vol. 1: Benton Creek Allotment at Ex. 6.*)

Under 36 C.F.R. § 215, the Notice of Decision is published in a local newspaper, 36 C.F.R. § 215.9(a), and mailed to interested parties, such as permittees, 36 C.F.R. § 215.9(c). An appeal may be filed within 45 days of the publication of the Notice of Decision, 36 C.F.R. § 215.2, 215.13(a). If no appeal is filed, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. 36 C.F.R. § 215.10(a). If an appeal is filed, implementation may not occur for 15 days following the disposition of the appeal. 36 C.F.R. § 215.10(b). An appeal must be decided not later 45 days after the end of

1 the appeal filing period. 36 C.F.R. §§ 215.13(f)(3), 215.17(a). The appeal decision constitutes  
2 the final administrative determination of the Forest Service, 36 C.F.R. § 215.215.18(c);  
3 thereafter, the agency's decision, Notice of Decision, is subject to judicial review, 36 C.F.R. §  
4 215.20.

5 Under 36 C.F.R. § 251, Subpart C, the permittee may appeal the Decision Notice because  
6 it relates to occupancy and use of National Forest system lands. The filing of the notice of  
7 appeal must be within 45 days of the date on the Notice of Decision. 36 C.F.R. § 251.88(2).  
8 Decisions made by the District Ranger, like those at issue here, are subject to two levels of  
9 review. 36 C.F.R. § 251.87(c). Both levels require the Reviewing Officer to issue a decision  
10 within 30 days of the date the record is closed. 36 C.F.R. § 251.99. Compilation of the record,  
11 especially at the first level of review can be time consuming, 36 C.F.R. § 251.98, involving  
12 intervention and responsive briefs, 36 C.F.R. §§ 251.94; 251.96, and time extensions may be  
13 granted for any phase of the appeal, except for the filing of the notice of appeal, 36 C.F.R. §  
14 251.89. There is also a possibility of discretionary review, which if granted must be conducted  
15 within 30 days. 36 C.F.R. § 251.00.

16 A decision may be implemented during this appeal process, unless the Reviewing Officer  
17 grants a stay or unless a term grazing permit holder appeals a decision and simultaneously  
18 requests its mediation. 36 C.F.R. § 251.103 (emphasis added). Mediation lasts 45 days, but  
19 may be extended for an additional 15 days. *Id.* If not resolved by mediation, the appeal is  
20 reinstated for administrative disposition. *Id.*

21 Whether or not to stay implementation of a decision pending an administrative appeal  
22 depends on the specific adverse effects upon the requester; harmful site-specific impacts or  
23 effects on resources in the area affected by the activities to be stopped; and how the cited effects  
24 and impact would prevent a meaningful decision on the merits. 36 C.F.R. § 251.91. The  
25 Reviewing Officer considers the validity of any claim of adverse effect on the requester and the  
26 effect that granting a stay would have on preserving a meaningful appeal on the merits. *Id.*

27 These regulatory provisions do not support the Defendant's argument that it is legally  
28 obligated to delay implementation of the NEPA permits because of administrative and judicial



1 appeals. A Decision Notice becomes effective no later than the 45 day appeal period from its  
 2 issuance, unless an appeal is filed pursuant to 36 C.F.R. § 215 or 36 C.F.R. § 251. Under either  
 3 provision, the proscribed delay is about another 60 days, but the type of extensive delay which  
 4 has occurred on many of the allotments at issue here occurs only if the permittee requests and  
 5 is granted a stay, either administratively or judicially.<sup>5</sup>

6 The Court rejects Defendant's assertion that there are only 14 allotments covered by  
 7 NEPA issued opinions. For the vast majority of the allotments identified in Plaintiff's First  
 8 Amended Complaint, decision notices have been issued. Plaintiff identified 119 allotments that  
 9 have had site-specific NEPA decisions issued since September 1, 1998.<sup>6</sup> (Plaintiff's Book of  
 10 Exhibits at Ex. 2: Declaration of Stade at ¶ 49: 60-day notice letter on October 12, 2000 at p.  
 11 3.) Unless the NEPA decision is in mitigation or on appeal and stayed, these allotments should  
 12 be in compliance with the NEPA decision, which depended on the ESA analysis of "no affect"  
 13 or "not likely to affect" determination made pursuant to the August-1998 Guidance Criteria.

14 d. Whether the February-1998 Guidance Criteria or the August-1998 Guidance Criteria  
apply to the grazing activities permitted on an allotment.

15 On September 18 and 24, 1998, the FWS issued its concurrence to the August 25, 1998,  
 16 Guidance Criteria, which were to serve as the criteria for determining whether formal  
 17 consultation under §7 of the ESA was necessary before issuing a ten-year term grazing permit  
 18 or whether the permitted activity could be deemed, pursuant the August-1998 Guidance  
 19 Criteria, to have "no affect" on an endangered or threatened species or "not likely to adversely  
 20 affect" an endangered or threatened species. (AR at Vol. 10, Ex. 1: Guidance Criteria, August  
 21

---

22 <sup>5</sup>To obtain a preliminary injunction in a judicial proceeding there must be a likelihood of success on  
 23 the merits and a possibility of irreparable injury, or the existence of serious questions on the merits and  
 24 a balance of hardship tipping in favor of the requestor. *National Wildlife Fed'n v. Burlington N. R. R.,*  
 25 *Inc.*, 23 F.3d 1508, 1510 (9<sup>th</sup> Cir. 1994). Under ESA, Congress removed the traditional equitable  
 26 discretion held by the courts over injunction proceedings when balancing the parties' competing interest,  
 27 and tipped the scale in favor of endangered species by giving them the highest of priorities. *Id.*  
 28 Consequently, the balancing of harm cuts against those challenging the implementation of NEPA  
 Decisions issued by the Forest Service.

<sup>6</sup>Compare this with the 265 allotments the Rescissions Act Allotment Schedule identified for  
 issuance of NEPA decisions for this same time frame.



25, 1998 at Appendix A.) While the use of the Guidance Criteria required concurrence from the FWS, which it issued pursuant to the September 18 Concurrence Letter, if the "no affect" finding or the "may affect, not likely to adversely affect" finding for a grazing permit was made pursuant to the August-1998 Guidance Criteria, there was no further concurrence required and informal consultation would be concluded. (AR at Vol. 1, Ex. 2: September 18 and 24, 1998 Concurrence Letters.)

The August-1998 Guidance Criteria is an extensive document, (*see* AR, Vol. 10, Ex. 1: Guidance Criteria, August 25, 1998), covering threatened and endangered species and proposed threatened and endangered species (TEPs) subject to grazing activities in the Southwestern Region. The discussion for each species includes information on its ESA status, such as when it was listed, where it occurs on federal lands, and whether there is a recovery plan, and the state status of the species. (Vol. 10, Ex. 1: Guidance Criteria, August 25, 1998 at Appendix A.) The Guidance Criteria provides specific criteria for each of the three possible findings ("no affect," "not likely to adversely affect," and "likely to adversely affect") for endangered or threatened species by group or individually. *Id.*

Contrary to Defendant's assertion, the Guidance Criteria include specific utilization standards and monitoring provisions. For example, the following criteria assess the effect of ongoing grazing on threatened, endangered, and protected (TEP) fish:

**MAY AFFECT, NOT LIKELY TO ADVERSELY AFFECT**

1. Livestock grazing occurs at any time of the year on the allotment, and all of the following are met:
  - A. TEP species or their habitats are present within the allotment or the subwatershed, based on the findings of a fishery biologist, and
  - B. Take (see definition) is avoided by year-long exclusion of livestock from occupied habitats, and exclusion of livestock from unoccupied suitable and potential habitats from 3/1 - 6/1 each year. Livestock use of stream crossings or watering points could constitute an exception to the above if a journey-level fishery biologist has used criterion D below to determine appropriate locations.
  - C. The subwatershed is in satisfactory condition or is recovering at near-natural rates in the presence of livestock grazing. **Range utilization standards that contribute to a healthy watershed are in place, and are being monitored.**

1           D.     **Site inspections have been conducted within the previous year**  
2                 **by a journey-level fish biologist. The biologist surveyed stream**  
3                 **habitats for suitability, occupancy, and overall condition (e.g.,**  
4                 **bank stability, stream morphology, embeddedness), has**  
5                 **evaluated riparian vegetation, upland conditions, watershed**  
6                 **and soil survey results, and has determined these data support**  
               **the absence of any measurable on-going effect on the species or**  
               **its habitat. For upland conditions, grazing utilization levels**  
               **will be consistent with the LRMP guidelines and key areas**  
               **used for monitoring will be biologically relevant to the well-**  
               **being of the listed species.**

7 (AR, Vol. 10: Ex. 1: Guidance Criteria, August 25, 1998 at 3) (emphasis added). For fish, the  
8 criteria are provided by habitat, but for terrestrial species, the criteria are provided by species.

9           For the jaguar, jaguarundi, and ocelot a "not likely to adversely affect" determination can  
10 be made only if the "normal livestock activities within riparian areas does not reduce cover."  
11 *Id.* at 21, 22, 25.

12           For the lesser long-nose bat and the Mexican long-nose bat, a "not likely to adversely  
13 affect" determination is appropriate if "livestock grazing results in utilization forage (by weight)  
14 of no more than 45 % within the allotment containing food plants utilized by the bats (unless  
15 site conditions require less than 45 % maximum use); and a monitoring/research plan is in effect  
16 at the Forest level to evaluate the relationship between livestock grazing and food plant  
17 distribution, abundance, recruitment, and ecology." *Id.* at 27, 30.

18           The criteria for the Aplomado falcon, is "livestock grazing occurs within occupied,  
19 suitable unsurveyed, or potential unsurveyed Aplomado falcon habitat only in concert with a  
20 monitoring program to determine responses of the habitat and the falcon to grazing, and areas  
21 of savannahs with yucca and scattered trees are being maintained for prey production and  
22 nesting habitat." *Id.* at 37.

23           The criteria for the cactus ferruginous pygmy owl is "livestock grazing is limited to  
24 utilization levels that avoid degradation of composition and vigor of understory vegetation or  
25 that preclude regeneration of any strata of vegetation, and is limited to 30 % utilization in desert  
26 scrub and xeroriparian areas and no more than 30 % of the apical stems of seedling/sapling (0-6  
27 feet) woody riparian species such as willows and cottonwoods in riparian areas in a given year"  
28

1 and "below 4000' elevation, mature vegetation outside riparian . . . is maintained with good  
2 ground cover for the preybase." *Id.* at 40.

3 The criteria for the Mexican spotted owl requires grazing levels that "provide the woody  
4 and herbaceous vegetation necessary for cover of rodent prey species, good to excellent range  
5 and ecological condition . . . and that will support the implementation of fire management that  
6 would reduce the risk of catastrophic wild fire in the Forest." *Id.* at 44.

7 For the southwestern willow flycatcher, a "not likely to adversely affect" determination  
8 may be made if grazing is permitted on an allotment, but livestock must be over five miles from  
9 occupied habitat during breeding season or two miles with trapping and monitoring, or an  
10 approved research program is in place; livestock grazing in unoccupied suitable habitat does  
11 not reduce the suitability; and grazing in potential habitat does not slow the progression of  
12 potential towards suitability in that regeneration or maintenance of woody vegetation is not  
13 impaired by trampling, bedding, or feeding and livestock grazing occurs during the dormant  
14 season only, and monitoring is in place and the results show that suitability is being maintained  
15 or enhanced. *Id.* at 53.

16 September 18, 1998, when the FWS concurred with the use of the August-1998  
17 Guidance Criteria for determining whether grazing activities had "no affect" or were "not likely  
18 to adversely affect" endangered species, they added several conditions, including the following:

19 For both the "no effect"<sup>7</sup> and "not likely to adversely effect"<sup>8</sup> determinations to  
20 remain in effect for the life of the term permit (up to 10 years), yearly  
confirmation throughout the lifetime of the permit must take place to ensure the  
criteria for those findings continue to be met.

21 (AR, Vol. 10, Ex. 2: September 18, 1998 Concurrence Letter at.) (emphasis added).

22 Under § 7 of the ESA and the August-1998 Guidance Criteria, before it issues the NEPA  
23 Decision, the Forest Service must determine whether grazing activities can meet the "no affect"  
24 or "not likely to adversely affect" standards as established by the Guidance Criteria. This  
25 process is the mechanism by which the Forest Service ensures that the grazing activities it is  
26

---

27 <sup>7</sup>See n. 2.

28 <sup>8</sup>See n. 2.

1 permitting for ten years are not likely to jeopardize the continued existence of any endangered  
2 or threatened species. The Forest Service analysis is presented in the form of a Biological  
3 Assessment, which documents how the determinations of "no affect" and "not likely to  
4 adversely affect" have been reached pursuant to the August-1998 Guidance Criteria. (AR, Vol.  
5 1, Ex. 2: September 18, 1998 Concurrence Letter at 2.)

6 For example, using the August-1998 Guidance Criteria, on September 17, 1998, the  
7 Forest Service issued the Biological Assessment of "no affect and "not likely to adversely  
8 affect" for the Basin Allotment, (AR, Vol. 1, Ex. 1: Biological Assessment.) On September 24,  
9 1998, the FWS issued its concurrence by sending a copy of the September 18, 1998  
10 Concurrence Letter to the Forest Service. (AR, Vol. 1, Ex. 2: September 24, 1998 letter.)

11 The Biological Assessment of the affects of an action on endangered, threatened, and  
12 protected species becomes a major part of the NEPA analysis, which is a comprehensive  
13 environmental analysis providing for extensive public comment and consideration of social and  
14 economic factors related to issuing grazing permits. The NEPA analysis issued in the form of  
15 a Decision Notice must result in a FONSI, "finding of no significant impact," before the Forest  
16 Service may issue the grazing permit.

17 For example, the Forest Service issued its Decision Notice and FONSI for the Basin  
18 Allotment on **June 22, 1999.**<sup>9</sup> (AR, Vol. 1, x. 4: Decision Notice.) The Decision Notice  
19 provided for a reduction in number of livestock and a change in the season of use for the  
20 allotment. (AR, Vol. 1, Ex. 4: Decision Notice at 2.) Under the regulations, the Decision  
21 Notice would have been effective within approximately 45 days, if there was no appeal.  
22 Pursuant to the Decision Notice, however, the permittee was given one year written notice of  
23 the change. *Id.* (new 10 year term grazing permit to issue in 1999 for the new numbers and  
24 season; change in the season of use to be effective until the 2000 grazing season). The Permit  
25 Modification for the Basin Allotment was not, however, issued until **January 29, 2001**, so,  
26 according to the Defendant, **January 29, 2001** became the effective date for the **June 22, 1999**

---

27 <sup>9</sup>The Rescission Act Schedule set the Basin Allotment NEPA analysis and decision deadline as 1997.  
28 (Allotment Schedule at 2.)

1 NEPA decision for the Basin Allotment. In other words, none of the standards nor the  
2 monitoring requirements of the **August-1998** Guidance Criteria applied to the allotment in  
3 1998-2000. (AR, Vol. 1, Ex. Basin; Defendant's SOF, Brown Dec. at ¶ 32.)

4 According to the Defendant, up until the NEPA authorized ten-year term grazing permit  
5 is implemented, it applies the February-1998 Guidance Criteria, which it uses to assess the year-  
6 to-year affect of ongoing grazing. Plaintiff has not challenged the use of the February-1998  
7 Guidance Criteria in relation to the annual permitting activities of the Forest Service, but only  
8 asserts that the February-1998 Guidance Criteria, which are based on the affects of grazing over  
9 three-years, may not be used to assess the affect of a ten-year term grazing permit. Defendant  
10 would be prohibited from doing this because the scope of the agency action determines the  
11 scope of the ESA § 7 analysis. (See this Order at 6 (discussing Judge Roll's Order at 27);  
12 *Conner v. Burford*, 848 F.2d at 1453) (the entire agency action must be analyzed under ESA,  
13 so ten-year term grazing permits cannot be based on three years)).

14 Defendant's assertion that the ten-year term permits it issues pursuant to NEPA are based  
15 on the August-1998 Guidance Criteria calls into question Count VII of Plaintiff's First  
16 Amended Complaint that 56 allotments (First Amended Complaint at Exhibit 5) have been  
17 issued ten-year term grazing permits based on the three year consultations (February-1998  
18 Guidance Criteria) rather than ten year consultations (August-1998 Guidance Criteria). (P's  
19 Reply at 19.)

20 Plaintiff admits that since it compiled the First Amended Complaint, many of the 56  
21 allotments have received new NEPA authorized permits based on new ESA consultations,  
22 pursuant to the August-1998 Guidance Criteria, covering the entire ten-year term of the permit.  
23 *Id.* "Forest Guardians [Plaintiff] agrees that its claim with respect to these allotments is moot."  
24 *Id.* The Plaintiff is also willing to accept the Defendant's position that the Forest Service does  
25 not need to informally consult on allotments where "no affect" findings were made. *Id.* at 19-  
26 20; *see also, Tinoqui-Chalola Council*, 232 F.3d at 1306 (if the agency determines its action  
27 "may affect" protected species or habitat, the agency is required to initiate formal consultation);  
28 50 C.F.R. § 402.14. Consequently, the Court believes that there may not be any NEPA

1 authorized ten-year term permits, based on the February-1998 Guidance Criteria (three year  
2 consultations), and that Count VII may be dismissed.<sup>10</sup>

3 As for any allotment where a NEPA Decision has issued authorizing a ten-year term  
4 grazing permit, the Court rejects the Defendant's argument that it may continue to monitor the  
5 grazing on an allotment pursuant to some lesser standards, such as the February-1998 Guidance  
6 Criteria for ongoing grazing activities, until it implements the new permit. Unless the  
7 Defendant can document some later effective date for a Decision Notice, pursuant to the  
8 provisions of 36 C.F.R. § 215 or § 251, the standards and monitoring requirements established  
9 for purposes of the ESA consultation apply to the allotment, approximately 45 days after the  
10 issuance of the NEPA decision. The corresponding ten-year term grazing permit, so authorized,  
11 must be issued in a timely fashion, not several years later. Defendant's practice of implementing  
12 the grazing permit years later nullifies agency regulations and calls into serious question the  
13 ESA analysis, which in most instances was performed even earlier than the issuance of the  
14 NEPA Decision.

15 e. Whether Defendant must reinitiate ESA § 7 consultation because it delayed in  
16 implementing utilization standards and monitoring requirements necessary to support  
"not likely to adversely affect" determinations made pursuant to the August-1998  
Guidance Criteria.

17 The issue now before this Court is whether or not the ESA consultations, made pursuant  
18 to the August-1998 Guidance Criteria, remain appropriate or whether with the passing of time  
19 there have been changes which cause the guidance criteria and ESA analysis to become invalid.

20 An agency must reinitiate ESA § 7 consultation with the FWS regarding the affects of  
21 its action, if new information reveals effects of the action that may affect endangered,  
22 threatened, and protected species and habitat, in a manner or to an extent not previously  
23 considered **or if the action is subsequently modified in a manner that causes an effect that**  
24 **was not considered in the biological opinion.** 40 C.F.R. § 402.16 (emphasis added).

---

25  
26 <sup>10</sup>If an allotment is covered by a ten-year term permit issued pursuant to the February-1998 Guidance  
27 Criteria, Count VII would be subject to dismissal if the permit fit within the exception of the  
28 Rescissions Act because it was issued prior to the issuance of a NEPA Decision or if the permit was  
issued in relation to CV 97-666 TUC JMR. (The Plaintiff has properly withdrawn the one allotment,  
Devil's Park, it identified as being res judicata barred because of CV 97-666 TUC JMR.)



1       The threshold for formal consultation must be set sufficiently low to insure that Federal  
2 agencies satisfy their duty to not jeopardize endangered species or adversely modify critical  
3 habitat. 51 Fed. Reg. 19,926, 19,949 (June 3, 1986). Therefore, the burden is on the Federal  
4 agency to show the absence of likely adverse effects in order to avoid the obligation of formal  
5 consultation. *Id.* A "not likely to adversely affect" finding is only appropriate "where the  
6 effects on listed species are expected to be discountable, insignificant, or completely  
7 beneficial." (AR, Vol. 1, Ex. 2: August-1998 Guidance Criteria; ESA Consultation Handbook  
8 § 3.5 at 3-13.) "If the information made available during informal consultation is not sufficient  
9 to make 'a not likely to adversely affect' determination, formal consultation is required." 51  
10 Fed. Reg. 19,926, 19,949 (June 3, 1986). A "likely to adversely affect" finding, triggering  
11 formal consultation, "is the appropriate conclusion if any adverse effect to a listed species may  
12 occur as a direct or indirect result of a proposed action or its interrelated or interdependent  
13 actions. . . ." (AR, Vol. 1, Ex. 2: August-1998 Guidance Criteria; ESA Consultation Handbook  
14 § 3.5 at 3-13.)

15       If the standards set out in the 1998-Guidance Criteria for a "not likely to adversely  
16 affect" determination are no longer satisfied, the FWS's concurrence is no longer appropriate,  
17 and the Defendant must initiate formal consultation with the FWS regarding the affect the ten-  
18 year grazing permit will have on threatened and endangered species. The Biological  
19 Assessment for each allotment documents how the determination of "not likely to adversely  
20 affect," pursuant to the August-1998 Guidance Criteria, was reached for that allotment. (AR,  
21 Vol. 1, Ex. 2: September 18, 1998 Concurrence Letter at 2.) The Biological Assessment  
22 specifies the utilization standard upon which the "not likely to adversely affect" determination  
23 is based.

24       "Allowable use is based on the amount and kind of forage on the allotment, plant needs,  
25 and range condition and trend. . . ." (AR, Vol. 1., Benton Creek, Ex. 5: Special Terms and  
26 Conditions at ¶ 8.) Generally, the maximum allowable forage use is 25% on poor range, 35%  
27 on fair and 40% on good condition range. The maximum allowable forage use for riparian  
28 areas in unsatisfactory condition is 25%. . . . for riparian areas in satisfactory condition, it is

45%." (AR, Vol. 1., Benton Creek, Ex. 5: Special Terms and Conditions at ¶ 8.); *see e.g.*, ((AR, Vol. 1, Benton Creek, Ex. 4: NEPA Decision at 1) (allowable forage use, grazing utilization standards, applied in determining capacity are 25% on poor range, 35% on fair range, and 40% on good range)). To ensure that the "not likely to adversely effect" determination remains in effect for the life of the term permit (up to 10 years), yearly confirmation throughout the lifetime of the permit must take place to ensure the criteria for those findings continue to be met." (AR, Vol. 10, Ex. 2: September 18, 1998 Concurrence Letter at 2.)

The necessary analysis must be made on an allotment by allotment basis. It requires a comparison of utilization monitoring data to the standards and requirements in the Biological Assessment, to determine if the August-1998 Guidance Criteria, supporting the "not likely to adversely affect" determination in the Biological Assessment, continues to be valid over the term of the permit. (*See e.g.*, AR, Vol. 2, Lake Mountain, Ex. 26 at 1.) In this way, the documents are interrelated. The Biological Assessment of "not likely to adversely affect" endangered or threatened species depends on the August-1998 Guidance Criteria, and the NEPA Decision and FONSI<sup>11</sup> depends on the Biological Assessment. Each builds on the other, until the standards and requirements become the terms and conditions of the grazing permits and annual range management plans. (*See e.g.*, AR, Vol. 2, Lake Mountain, Ex. 3: August-1998 Guidance Criteria at 41 (Mexican Spotted owl); Ex. 8: Biological Assessment; Ex. 7: Decision Notice and FONSI; Ex. 26-27: AOP for 2000; EX. 29-30: Modification of Grazing Permit.)

f. *Whether grazing on the Lake Mountain Complex in excess of utilization standards and the lack of monitoring in 1999-2000 require the Defendant to reinitiate ESA consultation regarding the affects of grazing on the Mexican Spotted Owl (MSO).*

On March 28, 2000, the Defendant prepared a Compliance Monitoring Report for the Lake Mountain Complex (Doyle Mountain, Mineral, Lake Mountain and Porter Springs allotments) to assess whether or not the informal consultation determination of "not likely to adversely affect" remained valid. The Biological Assessment for the allotment had been prepared June 23, 1999, and the NEPA Decision and FONSI had issued June 25, 1999. The

---

<sup>11</sup>Finding of No Significant Impact.

1 permits were not, however, modified and implemented until June 22, 2000. Even though the  
2 Defendant now argues it did not need to comply with the standards and requirements of the  
3 ESA consultations until the implementation of the NEPA approved permits, in March of 2000,  
4 it nevertheless, prepared a Compliance Report to assess whether it needed to reinitiate ESA  
5 consultation due to non-compliance with utilization standards for the Mexican spotted owl  
6 (MSO).<sup>12</sup> The analysis in the Report has been especially helpful to the Court, substantively, as  
7 well as being an example of the type of analysis required to determine whether Defendant  
8 should be directed to reinitiate consultation on allotments where it has allowed utilization levels  
9 to be exceeded or failed to monitor utilization levels. (*See* AR, Vol. 2, Lake Mountain, Ex. 25:  
10 Compliance Report March 28, 2000.)

11 The Report begins by noting that the "not likely to adversely affect" determination in the  
12 Environmental Assessment<sup>13</sup> was based on an average utilization by all ungulates<sup>14</sup> across the  
13 allotment of 26%. (*Id.* at 2 (citing EA at 19).) Using all the monitoring data gathered on the  
14 allotment, the District Ranger concluded that the average utilization across the allotment  
15 exceeded 32%, and that, therefore, the monitoring results indicated non-compliance with the  
16 ESA consultation package. *Id.*

17 The Report referred to the same provisions that this Court has noted require monitoring,  
18 which are the Guidance Criteria provision that "For both the 'no effect' and 'may effect, not  
19 likely to adversely affect' determinations to remain in effect for the life of the term permit (up  
20 to 10 years), yearly confirmation throughout the lifetime of the permit must take place to ensure  
21 the criteria for those findings continue to be met" and the FWS concurrence of September 18,

---

22 <sup>12</sup>The August-1998 Guidance Criteria for the Mexican Spotted owl specifically ties the "not likely  
23 to adversely affect" determination to utilization levels that are sufficient to maintain or restore adequate  
24 levels of residual plant cover and food sources for prey species. (AR, Vol. 2, Lake Mountain, Ex. 3:  
August-1998 Guidance Criteria at 44.)

25 <sup>13</sup>The Defendant performed an Environmental Assessment for the MSO, which was referred to in  
26 the Report, but not included in the Administrative Record provided to the Court. The remainder of the  
27 ESA analyses for the Lake Mountain Complex appear to be covered by the Biological Assessment  
conducted June 23, 1999. (AR, Vol. 2, Lake Mountain, Ex. 8.)

28 <sup>14</sup>An ungulate is a hoofed mammal.

1 1998, which reiterated the same condition. (AR, Vol. 2, Lake Mountain, Ex. 26: Compliance  
2 Monitoring at 8.). The Report also noted that the NEPA Decision and FONSI was contingent  
3 on the implementation of mitigation (utilization and capacity standards, and structural  
4 improvements) and monitoring measures. *Id.*

5 The Report explained that grazing utilization is a point-in-time measurement of  
6 herbaceous forage removed by a grazing animal. *Id.* According to the Report, the purpose of  
7 compliance monitoring is to validate the implementation of the NEPA Decision as it was  
8 presented and used as a basis for determining that the FONSI was made within the spirit of the  
9 August-1998 Guidance Criteria, therefore, needing no further consultation with FWS. *Id.* The  
10 purpose of effectiveness monitoring is so that management standards are met to ensure range  
11 readiness and ensure that allowable herbaceous forage utilization standards are met. *Id.* at 9.

12 Therefore, forage utilization is first measured just prior to livestock entering a pasture.  
13 This establishes the wild ungulate forage use before livestock enter. The next monitoring  
14 occurs at the midpoint of the scheduled use period and livestock distribution is noted. Midpoint  
15 monitoring determines whether the anticipated forage utilization will be met. Depending on the  
16 results, additional monitoring may be necessary. The point of the monitoring is so that when  
17 utilization is within 5 % of the desired level, the permittee will begin moving livestock to the  
18 next pasture. Final monitoring occurs in each pasture at the end of the growing season. This  
19 determines the total forage utilization that occurred as a result of both livestock and wild  
20 ungulates. If allowable use is exceeded, adjustments may be made to livestock numbers for the  
21 following year. *Id.* at 9.

22 A review of the Report shows that in 1999 for the Lake Mountain allotment, there was  
23 no range readiness monitoring. There was only partial midpoint monitoring for two of eight  
24 pastures. Post-livestock monitoring was equally sketchy for four of the eight pastures. Only  
25 three pastures had end of the season monitoring. *Id.* at 11. There was also inadequate  
26 monitoring of range capacity standards (number of permitted to graze in the pastures). *Id.* at  
27 16-18.  
28

1 The Report determined that utilization levels exceeded 40 % on six of the key areas  
2 monitored and concluded that the Defendant was not in compliance with the utilization  
3 standards nor the monitoring requirements for the allotment. *Id.* at 14-16. However, the Report  
4 noted, "The purpose of monitoring should not be simply to 'comply' with a requirement imposed  
5 by an outside agency, but rather should be used to improve or validate our management." *Id.*  
6 at 16.

7 To this purpose, the Report looked at the 1999 Environmental Assessment/NEPA  
8 Decision for the Lake Mountain allotment, which set the range capacity at 144 head of cattle,  
9 in comparison to the 1999 AOP,<sup>15</sup> which continued to permit 225 head of cattle on the  
10 allotment. The grazing season had not been reduced as prescribed in the Environmental  
11 Assessment. The Report noted that in general there was a correlation of excess use for pastures  
12 that were stocked at levels significantly higher than the estimated capacity set in the  
13 Environmental Assessment. *Id.* at 16-17. Also, for one pasture wild ungulate use appeared to  
14 have been underestimated because the annual precipitation was below normal causing wild elk  
15 to stay on the pasture longer than usual. *Id.* at 17. The Report explained that actual use must  
16 be established for each pasture within the allotment, or utilization data is close to meaningless  
17 because light stocking in a drought year could cause the same utilization level as heavy stocking  
18 in a normal year. *Id.* at 18.

19 The Report included recommendations for the immediate implementation of the  
20 monitoring, utilization, and capacity standards set out in the Lake Mountain ESA consultation  
21 package, "[s]hould it be determined that bringing these projects into compliance with the  
22 Guidance Criteria during the upcoming grazing season would avoid formal consultation, . . ."  
23 *Id.* at 2. The Report concluded that it was especially important to ensure that the proper level  
24 of monitoring continued through the term of the permit in order to continue to validate the  
25 determinations of affect and to ensure that the AOP adequately reflected the NEPA Decision.  
26 *Id.*

---

27  
28 <sup>15</sup>Annual Operating Plan.

1 From the administrative record it appears that Defendant implemented the ESA  
2 consultation provisions in 2000-2001. (AR, Vol. 2, Lake Mountain, Ex. 31, 35- 41.) In 2000,  
3 the Annual Operating Instructions were modified to include the utilization standards and  
4 monitoring provisions set out in the ESA and NEPA determinations. (AR, Vol. 2, Lake  
5 Mountain, Ex. 47: 1999 MSO<sup>16</sup> Litigation Narrative at ¶ 4.) The Term Grazing Permits were  
6 modified to reflect a three year graduated reduction in permitted livestock numbers to achieve  
7 the estimated grazing capacity for the allotment. *Id.* Utilization and pre-livestock entry checks  
8 were conducted which resulted in resting of several pastures due to drought, excess utilization  
9 by wild ungulates and domestic sheep grazing . *Id.* The Defendant conducted a review of the  
10 Lake Mountain Allotment field conditions in 2000 and, subsequently, adjusted the operating  
11 plans. *Id.* Two temporary employees were assigned to provide allotment unitization  
12 monitoring. *Id.* In 2001, permitted grazing activities were modified to account for site-specific  
13 monitoring considerations observed in 2000. *Id.* at ¶ 5. Management directives were given to  
14 the sheep permittee. *Id.* A temporary employee was hired to monitor the 2001 AOI and  
15 utilization standards. *Id.* New GIS maps were distributed to the permittees with accompanying  
16 aerial photo coverage to assist in monitoring. *Id.*

17 According to John Moore, Lakeside District Planning Staff, there was a reduced affect  
18 on the MSO protected and restricted habitat. *Id.* at 4-5. According to Berwyn Brown, the  
19 Assistant Regional Director of Rangeland Management for the Southwestern Region, standards  
20 were met on 11 key areas. Light overuse occurred on one key area, moderate overuse occurred  
21 on 5 key areas, and heavy overuse occurred on 4 key areas. (Defendants Motion for Summary  
22 Judgement at Ex. A: Brown Declaration at ¶ 39.)

23 Plaintiff admits that the following monitoring documentation exists in the administrative  
24 record: Grazing Permit Activity Record and notes 5/24/01-6/4/01; Grazing Permit Activity  
25 Record and notes 6/15/01-7/14/01; three Utilization Monitoring and Permit Compliance  
26 Documentation Forms 6/15/01, 7/14/01, and 7/14/01. (Plaintiff's Reply, Ex. 2: Stade  
27

---

28 <sup>16</sup>Mexican Spotted Owl.



1 Declaration at ¶ 5.) In addition, Plaintiff has received monthly reports from Defendant  
2 beginning in 2002, including a Grazing Permit Activity Record and notes 8/10/01-2/15/02. *Id.*  
3 Plaintiff complains that Defendant only conducted the midpoint monitoring in 2001 dated  
4 5/24/01 and that the Grazing Permit Activity Record from 8/10/01-2/15/02 did not include  
5 utilization monitoring of the kind required by the 1998-Guidance Criteria. *Id.* at 6.

6 According to the Plaintiff, the Court must order the Defendant to reinitiate ESA  
7 consultation on the Lake Mountain Allotment, pursuant to 50 C.F.R. § 402.16(c), because  
8 utilization standards have been exceeded in some areas and because Defendant has failed to  
9 conduct all the required monitoring. Plaintiff has not, however, argued nor shown that there  
10 is any evidence that the "not likely to adversely affect" determination for the MSO is invalid,  
11 **and this is the criteria for reinitiating ESA consultation.** An agency must reinitiate ESA §  
12 7 consultation with the FWS regarding the affects of its action, if new information reveals that  
13 the action may affect endangered, threatened, and protected species and habitat in a manner or  
14 to an extent not previously considered or if the action is subsequently modified in a manner that  
15 causes an affect that was not considered in the Biological Assessment. *See* 50 C.F.R. §  
16 402.16(c). In both instances, reinitiation of consultation hinges on a change in the **affect** of the  
17 action.

18 The Court rejects the Plaintiff's blanket assertion that Defendant must reinitiate § 7 ESA  
19 consultation in every instance where it has failed to conduct the required monitoring. This  
20 Court agrees with the Lakeside District Wildlife Biologist's opinion expressed in the Lake  
21 Mountain Complex Compliance Monitoring Report, "The purpose of monitoring should not be  
22 simply to 'comply' with a requirement imposed by an outside agency, but rather should be used  
23 to improve or validate our management." (AR, Vol. 2., Lake Mountain, Ex. 25: Compliance  
24 Monitoring at 16.) On the other hand, it is the monitoring requirement that ensures the  
25 utilization standards, which define the scope of the action, will not adversely affect certain  
26 species.

27 Monitoring information is useful to determine if management prescriptions are actually  
28 accomplishing what was predicted. *Id.* "In the short term, utilization data can be combined

1 with actual use and climate data to determine resource use levels and identify needed  
2 adjustments in management action (BLM 1996)." *Id.* Over the long term, utilization data can  
3 be combined with other monitoring data to determine if the management objectives of the  
4 Allotment Management Plan are actually being met." *Id.* Monitoring the effectiveness of the  
5 utilization standards is the specified mechanism by which the Defendant ensures that grazing  
6 on an allotment is "not likely to adversely affect" endangered and protected species. This  
7 explains why the Biological Assessments and NEPA Decisions and FONSIIs tie the "not likely  
8 to adversely affect" determinations to utilization levels and why they require ongoing  
9 monitoring of grazing utilization.

10 For example, the NEPA Decision and FONSI on the first allotment in the record, the  
11 Basin Allotment, includes specific actions that must be implemented to support its "not likely  
12 to adversely affect" determination. Grazing must be at a level that balances permitted livestock  
13 use with allotment capacity through issuance of a new ten-year term grazing permit for 27 cows  
14 and calf pairs with a season of use from 1/1 to 2/15. (AR., Vol. 1, Basin Allotment, Ex. 4:  
15 Decision Notice and FONSI at 1.)<sup>17</sup> The dormant season allowable forage use levels, called

---

16  
17 <sup>17</sup>Correspondingly, the Biological Assessment for the Basin Allotment, made pursuant to the August-  
18 1998 Guidance Criteria, provides, "The determinations of effects in this document are based on the  
19 action as described, improvements listed, and adherence to the specific utilization levels  
20 proposed." (AR., Vol. 1, Basin, Ex. 1: Biological Assessment at 1.) The Biological Assessment  
21 analyzed in detail the Little Colorado spinedace (threatened), located outside the allotment, but in the  
22 watershed, and the Mexican gray wolf (proposed), which have the potential to occur in the allotment  
23 or have habitat in the allotment. *Id.*

24 The Biological Assessment reflects the origin of the 27 allowable cow/calf pairs for the  
25 allotment's capacity and the grazing season of 1/1 to 2/15. *Id.* at 5. It included the two pasture  
26 rotational grazing system. *Id.* It scored the vegetation and soil conditions as poor, *id.* at 2, 5, and  
27 provided for dormant season allowable forage use of 40 % on herbaceous forage species and 20 % on  
28 woody forage species in all pastures, *id.* at 5.

The Biological Assessment found that grazing was "not likely to adversely affect" the spinedace  
because the preferred alternative included several measures that would reduce potential downstream  
impacts and improve watershed and riparian conditions on the allotment. *Id.* at 8. "Reductions in  
livestock numbers and implementation of riparian and upland utilization standards will result in  
improved upland and riparian conditions." *Id.* "The sub-watershed is expected to recover at near  
natural rates in the presence of livestock grazing." *Id.* The Biological Assessment included the same  
structural erosion control improvement projects later referenced in the NEPA Decision. *Id.* at 3, 8. The  
Biological Assessment found that the allotment was in the secondary recovery zone of the Mexican gray

1 grazing utilization standards, that were applied to determine of capacity were 40 % on  
2 herbaceous plants and 25 % on shrubs. *Id.* The NEPA Decision reconfigured pastures and set  
3 a pasture rotational grazing system. *Id.* at 2, 3. It required specific improvements, like fences  
4 and erosion control structures, to be constructed to improve distribution of livestock, to reduce  
5 forage use in key areas and to improve existing resource conditions and protect the watershed.  
6 *Id.* at 3. Similar to Lake Mountain, the Decision Notice for the Basin Allotment explains that  
7 the year to year determination to rest a pasture or to rotate cattle on and off pastures will be  
8 based on existing resource needs at the time. *Id.* at 2. Similarly, the Basin Allotment Decision  
9 specifies, "Monitoring will be conducted by the Forest Service . . . and some utilization  
10 monitoring . . . will be conducted in conjunction with Arizona Game and Fish Department as  
11 described in the Environmental Assessment." *Id.* at 3.

12 The burden is on the Defendant to show the absence of likely adverse affects to be  
13 excepted from the consultation provisions of the ESA. *See* 16 U.S.C. § 1536(a)(2) (agency's  
14 duty to ensure that its action is not likely to jeopardize the continued existence of any  
15 endangered species or threatened species or result in destruction or adverse modification of  
16 habitat for such species). The "not likely to adversely affect" ESA consultation determinations  
17 depended on monitoring to make this showing. Yet in the face of this mandate, Defendant  
18 failed to monitor utilization standards for many of the allotments. Nevertheless, it is the grazing  
19 overutilization of an allotment, with or without monitoring, that may or may not change the  
20 scope of the action to an extent that invalidates the affect determination made in the Biological  
21 Assessment for the allotment.

22 For example, the Defendant has made a thorough review of monitoring data available  
23 for the Lake Mountain Complex, and even though it was incomplete, in combination with other  
24 evidence, the Defendant determined that the "not likely to adversely affect" determination

---

25  
26 wolf, and that there was not likely to be any adverse affect because "with the grazing utilization  
27 standards established, the habitat of the prey base of the wolf is expected to improve." *Id.* at 12.  
28 "Livestock grazing on adjacent allotments are also having grazing utilization standards implemented  
intended to provide prey base habitat so there were not even any negative cumulative effects on the  
species. *Id.*

1 remained valid if implemented in 2000. Defendant appears to have implemented the utilization  
2 and monitoring standards for the allotment in 2000. In the face of no contrary evidence, the  
3 Compliance Report for the Lake Mountain Complex and subsequent action of the Defendant  
4 is an adequate basis for this Court to determine that the Plaintiff has failed to provide any  
5 evidence to support its claim that § 7 ESA consultation must be reinitiated for the MSO  
6 regarding the ten-year term grazing permits issued for the Lake Mountain allotment. The record  
7 for Lake Mountain and the MSO is, however, unique. The other allotments identified in the  
8 Plaintiff's First Amended Complaint do not have similar reports.

9 Because it lacks monitoring data to establish that the scope of the grazing activities on  
10 an allotment has complied with the Biological Assessment, the Defendant instead argues that  
11 the forage use guidelines established for the various allotments were set conservatively and that  
12 some overuse can occur before long-term damage results, so long as in its professional  
13 judgment the overgrazing of an allotment does not warrant reinitiating ESA consultation. (D's  
14 Motion at 24.) The Defendant argues that while the August-1998 Guidance Criteria may have  
15 mandated monitoring forage use, it did not require the Defendant to document the monitoring  
16 and in its professional judgment, it "is not aware of any information relating to monitoring on  
17 these allotments that would require reinitiation of consultation." *Id.*

18 While the latter argument may be true in that the monitoring requirements set out during  
19 consultation may not have specifically said that the Defendant had to "document" the  
20 monitoring data, such documentation is necessary for the Defendant to make the evidentiary  
21 showing that utilization standards and capacity limitations for an allotment are being met.  
22 Documentation is required by ESA. A basic principal of administrative review is that it is made  
23 on the record before the agency. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 419  
24 (1971); *Sierra Club v. Bosworth*, 2002 WL 654092 (Calif. 2002) (post-hoc declarations of  
25 Forest Service employee cannot be considered because not before the agency at the time of  
26 decision). "Allowing the Forest Service to rely on expert opinion without hard data either  
27 vitiates a plaintiff's ability to challenge an agency action or results in the courts second guessing  
28 an agency's scientific conclusions. Both of these results are unacceptable . . . ." *Idaho Sporting*

1 *Congress v. Thomas*, 137 F.3d 1146, 1150 (9<sup>th</sup> Cir. 1998); *see also*, *Blue Mountains Diversity*  
2 *Project v. Blackwood*, 161 F.3d 1208, 1214 (9<sup>th</sup> Cir. 1998). While these cases involved NEPA,  
3 the rationale applies here.

4 Without monitoring data, there is little in the record to establish that the provisions relied  
5 on for purposes of the ESA consultations remain valid protections for endangered, threatened,  
6 and protected species. Without monitoring data, there is little in the record to establish that the  
7 August-1998 Guidance Criteria determinations of "not likely to adversely affect" remain valid  
8 for the grazing activities that are being permitted on the allotments.

9 Lacking the monitoring data, Defendant instead relies on the declaration of Berwyn  
10 Brown, the Assistant Regional Director of Rangeland Management for the Southwestern  
11 Region. (Defendant's MSJ at Ex. A: Brown Declaration.) He explains that the utilization  
12 standards set during the ESA consultations were conservative to compensate for poor  
13 production years, but that plant needs can be provided for over several growing seasons and  
14 may not necessarily be provided each year. (Defendant's MSJ at Ex. A: Brown Declaration at  
15 ¶ 18.) The point of his attestations is that some overuse can be sustained without affecting the  
16 overall physiological needs of the plants. *Id.* at ¶ 19. He explains that the Court should  
17 interpret any over use from the standards set out in an allotment's Biological Assessment and  
18 FONSI as follows: an amount of 10% is considered light overuse; 11-20% is considered  
19 moderate overuse, and 21%+ is considered heavy overuse. *Id.* In his opinion, light to moderate  
20 overuse will not generally contribute to long-term damage to vegetation and soil and water  
21 resources. Sustained heavy overuse over time can contribute to poor range and/or watershed  
22 conditions. *Id.* "However, regardless of the circumstances, in all cases, managers are expected  
23 to take corrective actions when it is determined actual utilization standards have been or will  
24 soon be exceeded." *Id.* "The nature of a specific corrective action will depend on both the  
25 amount and frequency of overuse." *Id.*

26 The Court notes that Brown's assertions do not pertain to the effects of overuse on  
27 protected species, but is generalized regarding vegetation damage and damage to soil and water.  
28 There is nothing in the administrative record to suggest that the utilization and capacity



standards established during the ESA consultations should be loosely applied. For example, the utilization standards in the Biological Assessment for the Benton Creek Allotment were quite specifically set for the three pastures, as follows: 1) Benton Creek pasture at 35%; 2) Home pasture at 35 %, and 3) Rose pasture at 25 %. (AR, Vol. 1, Benton Creek, at Ex. 2: Biological Assessment at 8.) Capacity was set at 19 cow/calf units, with a three pasture rotational season of use from 7/1 to 10/31. *Id.*; *compare*, (AR, Vol. 1., Benton Creek, Ex. 5: Special Terms and Conditions at ¶ 8) ("Allowable use is based on the amount and kind of forage on the allotment, plant needs, and range condition and trend. . . . The maximum allowable forage use is 25% on poor range, 35% on fair and 40% on good condition range. The maximum allowable forage use for riparian areas in unsatisfactory condition is 25%. . . . for riparian areas in satisfactory condition is 45%.") ; *see also*, (AR, Vol. 1, Benton Creek, Ex. 4: NEPA Decision at 1 (allowable forage use, grazing utilization standards, applied in determining capacity are 25% on poor range, 35% on fair range, and 40% on good range).

Brown's asserted 10 % light overuse, if added to the allowable 25 % usage on poor range, equals 35 %, which is the utilization standard for fair range. Brown's asserted 11-20 % moderate overuse, if added to the allowable 35 % for fair range, equals 46 to 55 %, which exceed the utilization standards for good range. In the Compliance Report on the Lake Mountain Complex, the district ranger explained that utilization levels were to be monitored midpoint in the grazing season to determine pasture moves. (AR, Vol. 2, Lake mountain, Ex. 26: Compliance Monitoring Report at 12.) "If utilization was within 5 % of the acceptable level, livestock were to move." *Id.*

The Defendant fails to provide any evidentiary support for its professional judgment that reinitiation of ESA consultation is not warranted. Defendant may not meet its burden to ensure that grazing is not likely to adversely affect endangered, threatened and protected species by simply being "not aware of any information relating to monitoring on these allotments that would require reinitiation of consultation." *Id.*



1 g. Conclusions.

2 The Court rejects the Defendant's argument that only 14 allotments are covered by the  
3 utilization standards and monitoring requirements established for purposes of the ESA  
4 consultations by the 1998-Guidance Criteria and the allotment's respective Biological  
5 Assessment. The Court rejects the Defendant's argument that August-1998 Guidance Criteria  
6 do not apply at the time the NEPA Decision issues, but only upon some later discretionary  
7 implementation of the NEPA authorized ten-year term permit. The Court rejects the  
8 Defendant's argument that appeal procedures require the lengthy delays in implementing the  
9 NEPA authorized ten-year term grazing permits that the Court sees here. The Court rejects the  
10 Defendant's notion that it may establish ESA compliance on the basis of undocumented  
11 assertions and unsubstantiated opinions that in its professional judgment the "not likely to  
12 adversely affect" ESA determinations remain valid.

13 On the other hand, the Court rejects the Plaintiff's argument that ESA requires  
14 reinitiation of ESA consultation in every instance where the Defendant failed to monitor  
15 utilization or allowed over utilization on an allotment. This does not mean that the Court looks  
16 lightly on Defendant's lack of compliance with the utilization standards and monitoring  
17 provisions it relied on for ESA and NEPA authorization of its grazing permits, but "any"  
18 noncompliance cannot *per se* require reinitiation of § 7 ESA consultation. Such a scheme  
19 would be unworkable given the many and changing variables that factor into healthy range  
20 management, from which depends the protections for endangered, threatened, and protected  
21 species. The Court finds that reinitiation of ESA consultation is required when noncompliance  
22 has modified the agency action to an extent that causes an affect not previously considered. 50  
23 C.F.R. § 402.16(c). The Court is, however, in the untenable position of not being able to  
24 determine whether reinitiation of consultation is required under ESA because of the overly  
25 simplistic presentation of this case by the parties.

26 The Defendant has only provided evidence and argument for the 14 allotments that it  
27 asserted were covered by NEPA decisions. In large part it offered Brown's conclusory  
28

1 professional opinion, instead of facts supported by the Administrative Record, to establish that  
2 reinitiation of consultation was not required under ESA.

3 For example, the Defendant presented the following argument regarding the Benton  
4 Creek allotment. The spinedace ESA analysis determined that "watershed conditions are  
5 expected to recover at near-natural rates in the presence of livestock grazing," and that optimum  
6 habitat condition for the Mexican spotted owl are expected within 10 to 15 years. (Brown  
7 Declaration at ¶ 36.) Defendant failed to note that the ESA conclusion regarding recovery of  
8 watershed conditions for the spinedace and optimum habitat conditions for the Mexican spotted  
9 owl depended on specific utilization levels for the three pastures comprising the Benton Creek  
10 allotment: Benton Creek pasture at 35%, Home pasture at 35%, and Rose pasture at 25%. *See*  
11 *also*, (AR, Vol. 1, Benton Creek, Ex. 1: September 24, 1998 Concurrence Letter; Ex. 2:  
12 Biological Assessment) (Biological Assessment "not likely to adversely affect" determination  
13 based on the same capacity and utilization standards, and same structural projects aimed at  
14 protecting riparian areas and improving the movement of livestock on the allotment.)

15 The Benton allotment was monitored twice. On July 27, 2000, Defendant performed a  
16 midpoint check on the Benton Creek pasture. (Plaintiff's Book of Exhibits at Ex. 3.) It reflects  
17 that the pasture was used at 30 % as compared to its maximum utilization standard of 25%. *Id.*;  
18 *but see*, (AR, Vol. 1, Benton Creek, Ex. 2: Biological Assessment, Alternative 2) (35 %  
19 utilization standard for Benton Creek pasture). The other monitoring document was completed  
20 on July 18, 2000 for the Home pasture. It reflects a use level for the Home pasture of 41 %,  
21 when utilization was not supposed to exceed 35 %. (Plaintiff's Book of Exhibits at Ex. 3.)

22 Defendant admitted that there was no monitoring for range utilization performed in 1999,  
23 (AR, Vol. 1, Benton Creek, Ex. 6), but based on the 2000 midpoint and post-livestock checks,  
24 Brown determined that "[c]orrective measures were not necessary." (Defendant's MSJ at Ex.  
25 A: Brown's Declaration at ¶ 36.) Plaintiff argues that both monitoring documents show  
26 "excessive utilization." (Plaintiff's Reply at 13.)

27 The 2000 monitoring reports, one for the Benton Creek pasture and one for the Home  
28 pasture, are inadequate to support either conclusion. The Court is concerned that these two

1 monitoring reports may be the only available evidence regarding the validity of the Benton  
2 Creek "not likely to adversely affect" determination, but it is also possible that other evidence  
3 has been ignored by the parties because it was not relevant to the arguments they presented in  
4 their crossmotions for summary judgment. For example, the ESA "not likely to adversely  
5 affect" determination is more or less likely to be valid or invalid depending on when capacity  
6 reductions and three-pasture rotational season requirements were implemented, and/or when  
7 the permittee made the erosion control structures and fencing improvements. Neither side has  
8 presented such evidence nor argument.

9 The Court has rejected the parties' simplistic and narrow approaches to the law and the  
10 facts. The Court has clarified the law. Consequently, a ruling on the crossmotions for summary  
11 judgment would be premature without supplemental briefing of the issue: whether, on an  
12 allotment by allotment basis, the "not likely to adversely affect" decision remains valid or if §  
13 7 ESA consultation must be reinitiated by the Defendant.

14 First, the parties must identify which allotments listed in Plaintiff's First Amended  
15 Complaint are covered by NEPA decisions. The parties must identify the effective date of the  
16 NEPA Decision for each allotment. Any effective date, later than 5 business days from the  
17 close of the appeal filing (45 days) period, must be documented for a legitimate delay. For  
18 example, was an appeal being decided pursuant to 36 C.F.R. § 215 or was the matter in  
19 mediation, pursuant to 36 C.F.R. 251. A stay must have been requested and granted to  
20 otherwise delay the effective date of a Decision Notice.

21 Once the allotments, which fall within the confines of this Court's directives as being  
22 covered by NEPA decisions, are identified, the remainder shall be subject to dismissal. The  
23 Court assumes, based on the Defendant's presentations that all NEPA decisions have been based  
24 on the August-1998 Guidance Criteria and that Count VII of the First Amended Complaint may  
25 be dismissed. The Court does not believe that any ten-year term permits have been issued,  
26 pursuant to the February-1998 Guidance Criteria, with the exception of some that may have  
27 been reissued under the Rescissions Act prior to a NEPA analysis being conducted on the  
28 allotment or issued pursuant to CV 97-666 TUC JMR. If the Court's assumptions regarding

1 Count VII of Plaintiff's First Amended Complaint are incorrect, the Plaintiff may file a  
2 supplemental brief to show cause why Count VII should not be dismissed.

3 The parties shall jointly prepare and file one document which contains the following  
4 information for each allotment: 1) the effective date of the NEPA Decision Notice, 2)  
5 documentation justifying any effective date later than the close of the approximate 45 day  
6 appeal time; 3) the date the Biological Assessment was completed; 4) identify species that  
7 received a "not likely to adversely affect" determination, pursuant to ESA consultation; 5)  
8 identify the utilization and capacity standards used for purposes of the ESA "not likely to  
9 adversely affect" determination; 5) identify any other requirements, including structural  
10 improvements, used for purposes of the ESA "not likely to adversely affect" determination; 6)  
11 legible copies of monitoring documents, pertaining to the standards and requirements identified  
12 in 4 and 5.

13 The parties may file separate briefs analyzing the administrative record for each  
14 allotment regarding the validity of any "not likely to adversely affect" determination.

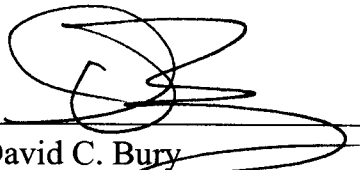
15 **Accordingly,**

16 **IT IS ORDERED** that the Plaintiff shall file any supplemental brief to show cause why  
17 Count VII should not be dismissed within 20 days of the filing date of this Order.

18 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Strike (document 51) portions  
19 of Brown's deposition is DENIED.

20 **IT IS FURTHER ORDERED** that a status conference shall be held on Wednesday,  
21 December 11, 2002 at 10:30 a.m. to determine a schedule for filing supplemental briefs and any  
22 supplement to the record.

23 **DATED** this 25<sup>th</sup> day of October, 2002.

24  
25  
26   
27 David C. Bury  
28 United States District Court

**REGION 3 ALLOTMENT SCHEDULE SUMMARY**

February 8, 1996

FOREST	TOTAL NUMBER OF ALLOTMENT ANALYSES AND DECISIONS					
	1996-1998	1999-2001	2002-2004	2005-2007	2008-2010	TOTAL
Apache-Sitgraves	34	26	25	13	3	101
Carson	34	18	13	4	0	69
Cibola	153	65	59	26	6	309
Coconino	12	12	6	0	0	30
Coronado	60	84	41	6	0	191
Gila	55	33	31	8	0	127
Kaibab	8	8	5	4	3	28
Lincoln	24	23	22	15	0	84
Prescott	18	16	12	6	7	59
Santa Fe	21	25	19	6	1	72
Tonto	23	0	0	0	0	23
<b>Regional Total</b>	<b>442</b>	<b>310</b>	<b>233</b>	<b>88</b>	<b>20</b>	<b>1093</b>

**SOUTHWEST REGION (R-3)  
SCHEDULE OF NEEDED ALLOTMENT ANALYSIS  
PUBLIC LAW 104-19, SECTION 504 (A)**

**R-3 1996-1998 Allotments**

	Dist	Allotment	Allot No	NEPA Planned
FOREST				
CARSON	2	ALAMOSA	201	1995
CARSON	4	BLACK LAKES	450	1995
CARSON	4	BLACK LAKES	450	1995
CARSON	4	CAPULIN	451	1995
CARSON	2	EL RITO LOBATO	200	1995
CARSON	4	KNOB	412	1995
LINCOLN	03	ACREY	00300	1995
APACHE-SIT.	5	CLAY SPRINGS	00028	1996
CARSON	7	BLACK COPPER	701	1996
CARSON	3	CARRAGAS	330	1996
CARSON	2	JARITA MESA	202	1996
CARSON	3	LAGUNA SECA	340	1996
CARSON	6	LAGUNITAS	607	1996
CARSON	7	LAKEFORK BALDY	715	1996
CARSON	4	LUNA CHACON	406	1996
CARSON	1	MOGÓTITO	113	1996
CARSON	4	RIO PUEBLO	404	1996
CARSON	7	RITO SEGUNDO	719	1996
CARSON	6	SAN ANTONE MTN	618	1996
CARSON	6	SUBLETTE	600	1996
CIBOLA	3	BIG ROSA	03344	1996
CIBOLA	3	DATIL	03322	1996
CIBOLA	2	EL RITO	02208	1996
CIBOLA	2	LOS INDIOS	02202	1996
CIBOLA	4	PADILLA	04402	1996
CIBOLA	4	PERRO	04411	1996
CIBOLA	2	SAN LUCAS	02209	1996
CIBOLA	7	UNIT 104,108,142	07104	1996
CIBOLA	8	UNIT 112	08112	1996
CIBOLA	8	UNIT 12,16	08012	1996
CIBOLA	8	UNIT 43,127	08043	1996
CIBOLA	8	UNIT 84	08084	1996
CIBOLA	8	UNIT 9,11	08009	1996
CIBOLA	8	UNIT 91-93	08091	1996
CIBOLA	3	WHITEHOUSE	03326	1996
COCONINO	04	BAKER LAKE	00098	1996
COCONINO	04	CALF PEN	00097	1996
GILA	09	AGUA FRIA	901	1996
GILA	09	ALAMOCITO	902	1996
GILA	07	ALLIE CANYON	500	1996
GILA	09	APODACA	922	1996
GILA	07	AVALANCHE PEAK	501	1996
GILA	07	BROCK CANYON	722	1996
GILA	07	CARRIZO	517	1996
GILA	04	CEDAR BREAKS	404	1996



GILA	05	DIAMOND BAR	502	1996
GILA	05	EAST CANYON	503	1996
GILA	09	EL CASO	908	1996
GILA	07	FIERRO	504	1996
GILA	05	INDIAN CREEK	227	1996
GILA	09	JEWETT COMM.	913	1996
GILA	03	LANEY	305	1996
GILA	03	MANGITAS	309	1996
GILA	04	MOGOLLON	413	1996
GILA	07	MOGOLLON CR.	724	1996
GILA	04	MULECREEK	414	1996
GILA	02	POVERTY CREEK	215	1996
GILA	09	PUERTO VIEJO	916	1996
GILA	02	SOUTH WAHOO	219	1996
GILA	05	TAYLOR CREEK	506	1996
GILA	03	TORINETTE	304	1996
GILA	09	W.SAND FLAT	921	1996
GILA	04	WHITEROCKS	401	1996
GILA	04	WINCHESTER	424	1996
LINCOLN	02	ANTELOPE	00409	1996
LINCOLN	01	BAR W	00104	1996
LINCOLN	03	BLACK RIVER	00302	1996
LINCOLN	01	COMERY	00110	1996
LINCOLN	01	FRITZ	00112	1996
LINCOLN	02	JAMES CNYN/DRY	00228	1996
LINCOLN	02	SACRAMENTO	00217	1996
LINCOLN	03	SITTING BULL	00318	1996
PRESCOTT	03	CROOKS CANYON	00307	1996
PRESCOTT	01	DEL RIO	00104	1996
PRESCOTT	05	GRAPEVINE	00507	1996
PRESCOTT	01	HORSESHOE	00108	1996
PRESCOTT	03	MAVERICK	00310	1996
PRESCOTT	01	SAND FLAT	00105	1996
PRESCOTT	01	W. BEAR CANYON	00113	1996
SANTA FE	05	BEAR LAKES	00503	1996
SANTA FE	05	BULL CREEK	00505	1996
SANTA FE	05	EL SOLITARIO	00404	1996
SANTA FE	01	FRENCH MESA	00103	1996
SANTA FE	02	LAGUNA SECA	00201	1996
SANTA FE	06	OSO VALLECITOS	00805	1996
SANTA FE	02	PALOMAS	00210	1996
SANTA FE	02	SIMON	00203	1996
SANTA FE	05	TECOLOTE	00411	1996
SANTA FE	02	VACAS	00219	1996
TONTO	06	GREENBACK	100	1996
APACHE-SIT.	3	BASELINE/HRS.SP.	00303	1997
APACHE-SIT.	6	BASIN	00101	1997
APACHE-SIT.	5	BLACK CANYON	00014	1997
APACHE-SIT.	4	CHEVELON CNYN.	00006	1997
APACHE-SIT.	1	COWFLAT	00204	1997
APACHE-SIT.	3	DARK CANYON	00308	1997
APACHE-SIT.	3	GRANVILLE	00310	1997
APACHE-SIT.	3	HELL'S HOLE	00311	1997

APACHE-SIT.	6	MURRAY BASIN	00613	1997
APACHE-SIT.	5	PIERCE WASH	00018	1997
APACHE-SIT.	1	PS	00122	1997
APACHE-SIT.	1	RED HILL	00215	1997
APACHE-SIT.	6	RUDD CREEK	00617	1997
APACHE-SIT.	6	SAFFEL SPRINGS	00619	1997
APACHE-SIT.	1	STONE CREEK	00110	1997
APACHE-SIT.	3	STRAYHORSE	00323	1997
APACHE-SIT.	5	SUNDOWN	00022	1997
APACHE-SIT.	6	TABLE TOP	00623	1997
APACHE-SIT.	5	VERDE	00039	1997
APACHE-SIT.	6	VOIGT	00625	1997
APACHE-SIT.	6	WATER CANYON	00626	1997
APACHE-SIT.	5	WILDCAT	00012	1997
APACHE-SIT.	5	WILLOW WASH	00027	1997
CARSON	7	BOBCAT	702	1997
CARSON	1	JAROSA-VEGA PAZ	110	1997
CARSON	2	SAN GABRIEL	204	1997
CARSON	6	SANTOS	636	1997
CARSON	6	TCLP	650	1997
CARSON	6	TIO GORDITO	632	1997
CIBOLA	2	AGUA FRIA	02226	1997
CIBOLA	4	BROWN	04420	1997
CIBOLA	2	COTTONWOOD/ TUCES	02220	1997
CIBOLA	3	DEEP CANYON	03342	1997
CIBOLA	3	HORSE MOUNTAIN	03343	1997
CIBOLA	3	SAN MATEO	03335	1997
CIBOLA	6	UNIT 1,9	06001	1997
CIBOLA	6	UNIT 10	06010	1997
CIBOLA	6	UNIT 103	06103	1997
CIBOLA	6	UNIT 104,100	06100	1997
CIBOLA	6	UNIT 105	06105	1997
CIBOLA	6	UNIT 106	06106	1997
CIBOLA	6	UNIT 107	06107	1997
CIBOLA	6	UNIT 108	06108	1997
CIBOLA	6	UNIT 109	06109	1997
CIBOLA	7	UNIT 109	07109	1997
CIBOLA	6	UNIT 11	06011	1997
CIBOLA	6	UNIT 110	06110	1997
CIBOLA	6	UNIT 112	06112	1997
CIBOLA	6	UNIT 113	06113	1997
CIBOLA	6	UNIT 12	06012	1997
CIBOLA	6	UNIT 12A,17	0612A	1997
CIBOLA	6	UNIT 13	06013	1997
CIBOLA	7	UNIT 130	07130	1997
CIBOLA	6	UNIT 14	06014	1997
CIBOLA	6	UNIT 15	06015	1997
CIBOLA	6	UNIT 16	06016	1997
CIBOLA	6	UNIT 18	06018	1997
CIBOLA	6	UNIT 19,47	06019	1997
CIBOLA	6	UNIT 2,3	06002	1997
CIBOLA	6	UNIT 20	06020	1997

CIBOLA	6	UNIT 21	06021	1997
CIBOLA	6	UNIT 22	06022	1997
CIBOLA	6	UNIT 23,24	06023	1997
CIBOLA	6	UNIT 25	06025	1997
CIBOLA	6	UNIT 26	06026	1997
CIBOLA	6	UNIT 27	06027	1997
CIBOLA	6	UNIT 28	06028	1997
CIBOLA	6	UNIT 29, 30	06029	1997
CIBOLA	6	UNIT 31	06031	1997
CIBOLA	6	UNIT 32	06032	1997
CIBOLA	6	UNIT 33,42	06033	1997
CIBOLA	6	UNIT 34	06034	1997
CIBOLA	6	UNIT 35,39	06035	1997
CIBOLA	6	UNIT 36	06036	1997
CIBOLA	6	UNIT 37	06037	1997
CIBOLA	6	UNIT 38	06038	1997
CIBOLA	6	UNIT 4,8	06004	1997
CIBOLA	6	UNIT 40	06040	1997
CIBOLA	6	UNIT 41,43	06041	1997
CIBOLA	8	UNIT 44,68,70,72	08044	1997
CIBOLA	6	UNIT 44E	06044	1997
CIBOLA	6	UNIT 44W	0644W	1997
CIBOLA	6	UNIT 48	06048	1997
CIBOLA	6	UNIT 5,6	06005	1997
CIBOLA	6	UNIT 50E	0650E	1997
CIBOLA	6	UNIT 50W	0650W	1997
CIBOLA	6	UNIT 51,64	06051	1997
CIBOLA	6	UNIT 52	06052	1997
CIBOLA	6	UNIT 53	06053	1997
CIBOLA	6	UNIT 54	06054	1997
CIBOLA	6	UNIT 55,45,111E	06055	1997
CIBOLA	6	UNIT 56	06056	1997
CIBOLA	6	UNIT 57,58,59	06057	1997
CIBOLA	8	UNIT 6	08006	1997
CIBOLA	6	UNIT 60	06060	1997
CIBOLA	6	UNIT 61	06061	1997
CIBOLA	6	UNIT 62	06062	1997
CIBOLA	6	UNIT 63,46	06063	1997
CIBOLA	6	UNIT 65	06065	1997
CIBOLA	6	UNIT 66,67	06066	1997
CIBOLA	6	UNIT 68	06068	1997
CIBOLA	6	UNIT 69	06069	1997
CIBOLA	6	UNIT 7,8	06007	1997
CIBOLA	6	UNIT 70	06070	1997
CIBOLA	6	UNIT 71	06071	1997
CIBOLA	6	UNIT 71 NW	0671W	1997
CIBOLA	6	UNIT 71S,75	067071	1997
CIBOLA	6	UNIT 73	06073	1997
CIBOLA	6	UNIT 74	06074	1997
CIBOLA	6	UNIT 76	06076	1997
CIBOLA	6	UNIT 77	06077	1997
CIBOLA	6	UNIT 78	06078	1997
CIBOLA	6	UNIT 79	06079	1997

CIBOLA	6	UNIT 80,87	06080	1997
CIBOLA	6	UNIT 81	06081	1997
CIBOLA	6	UNIT 82	06082	1997
CIBOLA	6	UNIT 83	06083	1997
CIBOLA	6	UNIT 84	06084	1997
CIBOLA	6	UNIT 85	06085	1997
CIBOLA	6	UNIT 86	06086	1997
CIBOLA	6	UNIT 88	06088	1997
CIBOLA	7	UNIT 88	07088	1997
CIBOLA	6	UNIT 89	06089	1997
CIBOLA	6	UNIT 91	06091	1997
CIBOLA	6	UNIT 92	06092	1997
CIBOLA	6	UNIT 93	06093	1997
CIBOLA	6	UNIT 94	06094	1997
CIBOLA	6	UNIT 95	06095	1997
CIBOLA	6	UNIT 96	06096	1997
CIBOLA	6	UNIT 97,98	06097	1997
CIBOLA	6	UNIT 99	06099	1997
CIBOLA	3	WEST MONTICEL- LO	03336	1997
CIBOLA	2	WINGATE	02213	1997
COCONINO	04	BEAVER CREEK	00112	1997
COCONINO	04	HACKBERRY/ PIVOT	00007	1997
COCONINO	02	MAXWELL SPRINGS	00035	1997
COCONINO	01	RIM ROCK	00011	1997
COCONINO	01	THIRTEEN MILE_	00012	1997
CORONADO	D3	A-Draw	00301	1997
CORONADO	D5	AM FLAG/INNERO	00506	1997
CORONADO	D2	APACHE SPRINGS	00240	1997
CORONADO	D1	BARBOOT	00122	1997
CORONADO	D1	BLACK DIAMOND	00159	1997
CORONADO	D3	Blacktail	00307	1997
CORONADO	D1	BOSS	00126	1997
CORONADO	D5	CANADA DEL ORO	00503	1997
CORONADO	D4	CEDAR SPRINGS	00409	1997
CORONADO	D1	COCHISE	00150	1997
CORONADO	D5	CUMERO	00520	1997
CORONADO	D2	DEBAUD	00232	1997
CORONADO	D1	DRAGOON	00152	1997
CORONADO	D1	EAST WHITETAIL	00149	1997
CORONADO	D5	FINLEY SPRINGS	00505	1997
CORONADO	D2	FORT	00247	1997
CORONADO	D2	GARDNER CAN- YON	00241	1997
CORONADO	D2	GREATERVILLE	00238	1997
CORONADO	D4	HARRISON	00432	1997
CORONADO	D4	HIGH CREEK	00433	1997
CORONADO	D3	HQ	00321	1997
CORONADO	D1	HUNT CANYON	00123	1997
CORONADO	D5	LAST CHANCE	00516	1997
CORONADO	D3	Lochiel	00346	1997

CORONADO	D1	LOWER RUCKER	00115	1997
CORONADO	D1	MIDDLEMARCH	00158	1997
CORONADO	D4	NORTH ASH	00435	1997
CORONADO	D4	O BAR O	00419	1997
CORONADO	D2	OAK TREE	00237	1997
CORONADO	D2	ROSEMONT	00234	1997
CORONADO	D1	SLAVIN	00154	1997
CORONADO	D2	THURBER	00236	1997
CORONADO	D4	TWO TROUGHS	00410	1997
CORONADO	D4	VJ	00407	1997
GILA	06	ALEXANDER	600	1997
GILA	02	BLACK MOUNTAIN	223	1997
GILA	04	COPPER CREEK	412	1997
GILA	07	COW CREEK	705	1997
GILA	04	DRY CREEK	407	1997
GILA	09	GALLO MTN.	917	1997
GILA	06	GOVINA	609	1997
GILA	05	JORDAN MESA	505	1997
GILA	06	LOWER PLAZA	620	1997
GILA	07	SHINGLE CANYON	511	1997
GILA	07	SPAR CANYON	727	1997
GILA	04	TENNESSEE	422	1997
KAIBAB	4	ANITA	34	1997
KAIBAB	4	CAMERON	35	1997
KAIBAB	2	DOG KNOBS	7	1997
KAIBAB	2	ELK SPRINGS	9	1997
LINCOLN	01	BLOCK	00106	1997
LINCOLN	02	C C WALKER	00423	1997
LINCOLN	01	CAPITAN GAP	00109	1997
LINCOLN	02	CARRISSA	00425	1997
LINCOLN	03	DARK CANYON	00306	1997
LINCOLN	01	NOGAL LAKE	00124	1997
LINCOLN	02	PERK	00437	1997
LINCOLN	03	SOLDIER SPRINGS	00319	1997
LINCOLN	02	SOWELL	00447	1997
PRESCOTT	05	ASH CREEK	00500	1997
PRESCOTT	03	BRUSHY	00302	1997
PRESCOTT	03	CONTRERAS	00306	1997
PRESCOTT	05	DUGAS	00506	1997
PRESCOTT	05	LONG GULCH	00511	1997
PRESCOTT	05	RICE PEAK	00514	1997
PRESCOTT	01	STEPHENS	00121	1997
SANTA FE	06	ASPEN MOUNTAIN	00603	1997
SANTA FE	03	LOS CONCHAS	00305	1997
SANTA FE	02	SAN MIGUEL	00213	1997
SANTA FE	02	SEÑORITO	00207	1997
TONTO	02	BOHME	15	1997
TONTO	05	BRYANT MT/SPR	63/79	1997
		CK		
TONTO	02	CAPITAN	17	1997
TONTO	05	CATHOLIC PEAK	64	1997
TONTO	06	CENTER MOUN-	84	1997
		TAIN		

TONTO	04	CHRISTOPHER MTN.	46	1997
TONTO	05	DIAMOND	69	1997
TONTO	05	DIAMOND BUTTE	69	1997
TONTO	02	DIMARIO	21	1997
TONTO	04	ELLINWOOD	49	1997
TONTO	05	GENTRY MOUN-TAIN	65	1997
TONTO	06	HAVENS	87	1997
TONTO	04	POLE HOLLOW	57	1997
TONTO	05	POTATO BUTTE	76	1997
TONTO	02	RADIUM	31	1997
TONTO	05	RED LAKE	77	1997
TONTO	01	SEARS-CLUB	09	1997
TONTO	02	SLEEPING BEAUTY	35	1997
TONTO	03	SUNFLOWER	41	1997
TONTO	04	THIRTEEN	60	1997
APACHE-SIT.	3	ADBAR	00301	1998
APACHE-SIT.	1	BLACK RIVER	00121	1998
APACHE-SIT.	7	CA/DO/JUN/LIN/MC	00033	1998
APACHE-SIT.	1	COLTER CREEK	00107	1998
APACHE-SIT.	3	EAST EAGLE	00309	1998
APACHE-SIT.	6	GREER	00610	1998
APACHE-SIT.	3	HOG TRAIL	00313	1998
APACHE-SIT.	5	LONGTOM	00011	1998
APACHE-SIT.	3	LOP EAR	00315	1998
APACHE-SIT.	1	NUTRIOSO SUM-MER	00108	1998
CARSON	4	ANGOSTURA	405	1998
CARSON	3	CABRESTO	320	1998
CARSON	1	CANJILON	101	1998
CARSON	2	CANO	206	1998
CARSON	7	MIDNIGHT MAL-LETE	707	1998
CARSON	4	MIRANDA	456	1998
CARSON	4	SANTA BARBARA	403	1998
CARSON	6	SPRING CREEK	631	1998
CARSON	4	TRAMPAS	401	1998
CARSON	6	TUSAS	626	1998
CIBOLA	4	ENCINO	04409	1998
CIBOLA	2	LLANITO FRIO	02204	1998
CIBOLA	3	MONICA	03345	1998
CIBOLA	3	MULESHOE	03303	1998
CIBOLA	2	RAMAH	02219	1998
CIBOLA	2	STINKING SPRINGS	02214	1998
CIBOLA	7	UNIT 105,106,110	07105	1998
CIBOLA	7	UNIT 119,122	07119	1998
CIBOLA	7	UNIT 121	07121	1998
CIBOLA	8	UNIT 124,125	08124	1998
CIBOLA	8	UNIT 125	08125	1998
CIBOLA	7	UNIT 13,19,138	07013	1998



CIBOLA	7	UNIT 134	07134	1998
CIBOLA	7	UNIT 144	07144	1998
CIBOLA	7	UNIT 22,24,25,26	07022	1998
CIBOLA	7	UNIT 28,29	07028	1998
CIBOLA	7	UNIT 3,7,8	07003	1998
CIBOLA	7	UNIT 30	07030	1998
CIBOLA	7	UNIT 30,91	07030	1998
CIBOLA	7	UNIT 33	07033	1998
CIBOLA	8	UNIT 38,41	08038	1998
CIBOLA	7	UNIT 4,11,139,12	07004	1998
CIBOLA	7	UNIT 43,45,48	07043	1998
CIBOLA	7	UNIT 5,6	07005	1998
CIBOLA	7	UNIT 53	07053	1998
CIBOLA	7	UNIT 59,66	07059	1998
CIBOLA	7	UNIT 61,63	07062	1998
CIBOLA	7	UNIT 65,69	07065	1998
CIBOLA	7	UNIT 66	07066	1998
CIBOLA	8	UNIT 7,8	08007	1998
CIBOLA	7	UNIT 74,75	07074	1998
CIBOLA	7	UNIT 82,83	07082	1998
CIBOLA	8	UNIT 82,83	08082	1998
CIBOLA	7	UNIT 9	07009	1998
COCONINO	05	DEEP LAKE	00055	1998
COCONINO	02	KENDRICK MTN	00034	1998
COCONINO	05	PADRE CYN/ ELLIOT	00061	1998
COCONINO	05	PICKETT LAKE/ELL	00103	1998
COCONINO	04	WALKER BASIN	00117	1998
CORONADO	D5	BARNEY	00517	1998
CORONADO	D5	BELLOTA	00502	1998
CORONADO	D4	BLACK ROCK	00404	1998
CORONADO	D4	BULL TANK	00434	1998
CORONADO	D2	CROSS S	00204	1998
CORONADO	D1	FAIRCHILD	00134	1998
CORONADO	D3	Farrell	00315	1998
CORONADO	D2	FRESNAL	00203	1998
CORONADO	D5	FRESNO	00519	1998
CORONADO	D3	Harshaw	00319	1998
CORONADO	D1	HORSESHOE	00118	1998
CORONADO	D2	JARILLAS	00202	1998
CORONADO	D3	Lewis	00325	1998
CORONADO	D1	LOWERROCK CREEK	00103	1998
CORONADO	D2	MONTANA	00207	1998
CORONADO	D4	NORTH REEF	00402	1998
CORONADO	D3	Oak Bar	00324	1998
CORONADO	D2	ORO BLANCO	00206	1998
CORONADO	D4	POLECAT	00448	1998
CORONADO	D5	REDINGTON PASS	00504	1998
CORONADO	D1	ROBERTSON	00144	1998
CORONADO	D4	ROCKY	00449	1998
CORONADO	D3	Santa Cruz	00351	1998
CORONADO	D2	SARDINA	00209	1998

CORONADO	D4	SOUTH GOODWIN	00403	1998
CORONADO	D1	WEST END	00127	1998
GILA	02	ALEXANDER	222	1998
GILA	04	ALMA	400	1998
GILA	02	BURNT CABIN	224	1998
GILA	02	CORONADODU- ROY	226	1998
GILA	06	ORONADONER MT	614	1998
GILA	06	DARK CANYON	605	1998
GILA	03	DILLMAN CREEK	308	1998
GILA	06	LONG CANYON	611	1998
GILA	04	PUEBLO CREEK	310	1998
GILA	07	READING MTN.	713	1998
GILA	04	SACATON	419	1998
GILA	06	SU	613	1998
GILA	03	TROUT CREEK	316	1998
GILA	03	UNDERWOOD LAKE	306	1998
GILA	07	WATSON MOUN- TAIN	728	1998
GILA	05	XSX	808	1998
KAI	3	BUFFALO RANCH	24	1998
KAIBAB	2	COWBOY TANK	52	1998
KAIBAB	3	RYAN	31	1998
KAIBAB	2	SQUAW MTN	18	1998
LINCOLN	02	BELL CANYON	00401	1998
LINCOLN	02	BOUNDS	00402	1998
LINCOLN	02	CRIDEBRING	00427	1998
LINCOLN	02	CUEVO	00428	1998
LINCOLN	03	NATIONAL	00313	1998
LINCOLN	01	WILDERNESS	00509	1998
PRESCOTT	01	ANTELOPE HILLS	00100	1998
PRESCOTT	01	CHINA DAM	00102	1998
PRESCOTT	01	MULDOON	00109	1998
PRESCOTT	01	PERKINSVILLE	00111	1998
SANTA FE	05	BARBERO	00502	1998
SANTA FE	03	CEBOLLA SAN AN- TO	00303	1998
SANTA FE	01	CHAMA	00100	1998
SANTA FE	02	CUBA MESA	00214	1998
SANTA FE	05	PADRE SPRINGS	00515	1998
SANTA FE	06	RANCHO VIEJO	00800	1998
SANTA FE	05	VALLE GRANDE/ AC	00524	1998
TONTO	02	GERALD HILLS	22	1998
TONTO	06	GREENBACK	100	1998

## R-3 1999-2001 Allotments

FOREST	Dist	Allotment	Allot No	NEPA Planned
APACHE-SIT.	3	ALMA MESA	00302	1999
APACHE-SIT.	7	ARAB	00056	1999
APACHE-SIT.	1	BONEYARD	00118	1999
APACHE-SIT.	4	CLEAR CREEK	00001	1999
APACHE-SIT.	7	LA/DOB/MIN/PORT	00057	1999
APACHE-SIT.	7	LAKE MOUNTAIN	00055	1999
APACHE-SIT.	1	NUTRIOSO WIN- TER	00106	1999
APACHE-SIT.	3	SARDINE	00322	1999
APACHE-SIT.	6	SHEEP SPRINGS	00622	1999
CARSON	6	APACHE COMPLEX	651	1999
CARSON	3	BANCOS	310	1999
CARSON	1	BATEMAN	100	1999
CARSON	7	COLUMBINE	712	1999
CARSON	2	SALVADOR COM- PLEX	212	1999
CIBOLA	2	BRANSON	02212	1999
CIBOLA	2	DAN VALLEY/DENT	02221	1999
CIBOLA	3	FLYING V	03324	1999
CIBOLA	2	LA JARA	02212	1999
CIBOLA	3	ROCK HILL	03320	1999
CIBOLA	2	SIX A & PREWITT	02216	1999
CIBOLA	4	TORREON	04408	1999
CIBOLA	8	UNIT 100-123	08100	1999
CIBOLA	8	UNIT 102,105	08102	1999
CIBOLA	7	UNIT 102,143	07102	1999
CIBOLA	8	UNIT 109,147	08109	1999
CIBOLA	8	UNIT 114	080114	1999
CIBOLA	8	UNIT 116	08116	1999
CIBOLA	7	UNIT 126,128,129	07126	1999
CIBOLA	8	UNIT 131-135	08131	1999
CIBOLA	7	UNIT 132	07132	1999
CIBOLA	7	UNIT 135	07135	1999
CIBOLA	7	UNIT 14	07014	1999
CIBOLA	7	UNIT 14,16,17	07016	1999
CIBOLA	8	UNIT 18,20	08018	1999
CIBOLA	8	UNIT 23,51,52	08023	1999
CIBOLA	8	UNIT 24,25,28	08024	1999
CIBOLA	8	UNIT 29,79,80,99	08029	1999
CIBOLA	8	UNIT 31,40,49,66	08031	1999
CIBOLA	7	UNIT 44	07044	1999
CIBOLA	8	UNIT 53	08053	1999
CIBOLA	8	UNIT 61,62	08061	1999
CIBOLA	8	UNIT 64	08064	1999
CIBOLA	7	UNIT 64,68	07064	1999
CIBOLA	7	UNIT 72,78,80,81	07072	1999
CIBOLA	8	UNIT 85	08085	1999
CIBOLA	8	UNIT 89	08089	1999

CIBOLA	7	UNIT 90	07090	1999
CIBOLA	8	UNIT 90	08090	1999
COCONINO	07	BUCK SPRINGS	00083	1999
COCONINO	04	BUCKHORN	00114	1999
CORONADO	D2	ALTO	00246	1999
CORONADO	D1	BIG BEND	00124	1999
CORONADO	D4	BOTTLE CANYON	00427	1999
CORONADO	D4	COPPER CREEK	00444	1999
CORONADO	D3	Crittendon	00314	1999
CORONADO	D4	DEER CREEK	00429	1999
CORONADO	D1	FOURR	00153	1999
CORONADO	D4	GILLESPIE	00417	1999
CORONADO	D4	GRANT CREEK	00413	1999
CORONADO	D1	GUADALUPE	00143	1999
CORONADO	D3	O'Donnell	00332	1999
CORONADO	D3	Papago	00334	1999
CORONADO	D1	PEDREGOSA	00125	1999
CORONADO	D5	SAMINAGO RIDGE	00513	1999
CORONADO	D1	SANDERS	00145	1999
CORONADO	D4	SO.ASH CREEK	00436	1999
CORONADO	D2	SQUAW GULCH	00248	1999
CORONADO	D4	SUNSET	00431	1999
CORONADO	D2	TEMPORAL	00250	1999
CORONADO	D4	TEN	00422	1999
GILA	06	APACHE CANYON	601	1999
GILA	06	BLACK BOB	602	1999
GILA	03	CENTERFIRE	303	1999
GILA	09	EAST DEMETRIO	906	1999
GILA	09	EAST SAND FLAT	907	1999
GILA	06	FRISCO PLAZA	618	1999
GILA	02	NORTH WAHOO	214	1999
GILA	04	RAIN CRK-74 MT.	725	1999
GILA	07	REDSTONE	714	1999
GILA	04	ROBERTS PARK	418	1999
GILA	07	ROUGH CANYON	726	1999
GILA	05	SAPILLO	509	1999
GILA	02	V+T	229	1999
KAIBAB	4	MOQUI	36	1999
KAIBAB	1	TULE	55	1999
LINCOLN	03	BEAR SPRINGS	00301	1999
LINCOLN	02	CURTIS CANYON	00406	1999
LINCOLN	02	DOG CANYON	00429	1999
LINCOLN	01	PERRY CANYON	00520	1999
LINCOLN	02	PINON	00438	1999
LINCOLN	02	SMITH	00419	1999
PRESCOTT	05	COPPER CANYON	00505	1999
PRESCOTT	05	SQUAW PEAK	00515	1999
PRESCOTT	05	YOUNG	00520	1999
SANTA FE	05	CAPULIN	00402	1999
SANTA FE	01	JAROSA	00105	1999
SANTA FE	02	LA JARA	00206	1999
SANTA FE	02	OJITOS	00200	1999
SANTA FE	05	ROSILLA	00520	1999

SANTA FE	03	SAN DIEGO	00312	1999
SANTA FE	06	SIERRA MOSCA	00801	1999
APACHE-SIT.	6	BEEHIVE	00601	2000
APACHE-SIT.	7	BRUSHY/BUCK	00052	2000
		SPR.		
APACHE-SIT.	1	BUSH CREEK	00208	2000
APACHE-SIT.	1	FOOTE CREEK	00207	2000
APACHE-SIT.	5	HEBER	00016	2000
APACHE-SIT.	3	HICKEY	00312	2000
APACHE-SIT.	7	PINEDALE	00031	2000
APACHE-SIT.	3	PLEASANT VALLEY	00230	2000
CARSON	7	ARROYO HONDO	700	2000
CARSON	2	COMANCHE	203	2000
CARSON	4	FLECHADO	453	2000
CARSON	1	MESA OSO	121	2000
CARSON	4	OLLA-RANCHOS	454	2000
CARSON	4	TIENDITAS	455	2000
CARSON	6	TIO GRANDE	617	2000
CIBOLA	3	ABBE SPRINGS	03319	2000
CIBOLA	3	BEAR MOUNTAIN	03313	2000
CIBOLA	2	BLUEWATER	02225	2000
CIBOLA	4	CORONA	04417	2000
CIBOLA	4	COUGAR MOUN-	04416	2000
		TAIN		
CIBOLA	2	MT SEDGEWICK	02230	2000
CIBOLA	3	SAWTOOTH	03327	2000
CIBOLA	7	UNIT 100,101,141	07100	2000
CIBOLA	8	UNIT 142,143,144	08142	2000
CIBOLA	8	UNIT 3	08003	2000
CIBOLA	8	UNIT 35	08035	2000
CIBOLA	7	UNIT 42	07042	2000
CIBOLA	8	UNIT 46,129-137	08046	2000
CIBOLA	7	UNIT 58,60,61	07058	2000
CIBOLA	8	UNIT 60	08060	2000
CIBOLA	8	UNIT 81	08081	2000
CIBOLA	7	UNIT 97,98,99	07097	2000
CIBOLA	2	WELLS SPRING	02224	2000
COCONINO	05	ANDERSON	00053	2000
		SPRINGS		
COCONINO	07	BAR T BAR	00119	2000
COCONINO	02	BLACK BILL	00108	2000
COCONINO	05	LAKE MARY/	00115	2000
		FISHER		
COCONINO	07	LOST EDEN	00111	2000
COCONINO	02	PEAKS	00106	2000
CORONADO	D2	AGUA CALIENTE	00245	2000
CORONADO	D2	BOX CANYON	00235	2000
CORONADO	D1	BRUNO	00120	2000
CORONADO	D4	FOUR MILE	00425	2000
CORONADO	D1	GERONIMO	00138	2000
CORONADO	D4	GILLMAN	00420	2000
CORONADO	D1	GRAVES	00133	2000
CORONADO	D1	HALFMOON	00156	2000

CORONADO	D2	HELVETIA	00233	2000
CORONADO	D3	Lyle Canyon	00327	2000
CORONADO	D2	MADERA	00244	2000
CORONADO	D3	Manilla	00328	2000
CORONADO	D2	MCBETH	00239	2000
CORONADO	D1	OUTLAW MOUN- TAIN	00135	2000
CORONADO	D4	RILEY PEAK	00446	2000
CORONADO	D4	ROCK HOUSE	00445	2000
CORONADO	D4	SAN PEDRO	00441	2000
CORONADO	D3	Sawtelle	00339	2000
CORONADO	D4	SEVENTY SIX	00412	2000
CORONADO	D4	SHINGLE MILL	00411	2000
CORONADO	D1	SKELETON	00131	2000
CORONADO	D4	SOMBRERO BUTTE	00443	2000
CORONADO	D4	SQUAW BASIN	00426	2000
CORONADO	D2	STONE SPRINGS	0231	2000
CORONADO	D4	WHITE STREAKS	00423	2000
CORONADO	D2	WHITEHOUSE	00243	2000
GILA	02	BLACK RANGE	201	2000
GILA	07	BULLARD PEAK	701	2000
GILA	07	BURRO MOUNTAIN	702	2000
GILA	04	DEVILS PARK	427	2000
GILA	04	HOLT GULCH	410	2000
GILA	06	LEGGETT	619	2000
GILA	05	POWDERHORN	508	2000
GILA	02	SILVER CREEK	216	2000
GILA	06	T BAR	623	2000
GILA	09	WEST DEMETRIO	910	2000
KAIBAB	2	GOVERNMENT MTN	10	2000
KAIBAB	3	HOUSEROCK	27	2000
KAIBAB	3	KANE	28	2000
LINCOLN	02	AKERS	00445	2000
LINCOLN	01	ARROYO SECO	00102	2000
LINCOLN	01	BENADO GAP	00105	2000
LINCOLN	02	EK- N BLUEWATER	00431	2000
LINCOLN	03	HARDIN	00308	2000
LINCOLN	02	RUSSIA CANYON	00216	2000
LINCOLN	02	UPPER BURNT	00424	2000
PRESCOTT	03	BUCKHORN	00303	2000
PRESCOTT	03	BURNT RANCH	00304	2000
PRESCOTT	03	COLD SPRINGS	00305	2000
PRESCOTT	01	SMITH CANYON	00120	2000
PRESCOTT	05	SYCAMORE	00516	2000
PRESCOTT	03	TANK CREEK	00312	2000
SANTA FE	06	EROSION	00807	2000
SANTA FE	02	GALLINA MTN.	00204	2000
SANTA FE	01	GALLINA RIVER	00104	2000
SANTA FE	02	PENAS NEGRAS	00209	2000
SANTA FE	05	RIO DE LA CASA	00407	2000
SANTA FE	05	SAN JOSE	00409	2000



SANTA FE	03	SAN JUAN WATER	00316	2000
SANTA FE	03	VALLECITOS	00309	2000
APACHE-SIT.	7	BLUE RIDGE	00045	2001
APACHE-SIT.	6	CROSS BAR	00606	2001
APACHE-SIT.	4	LIMESTONE	00007	2001
APACHE-SIT.	3	PIGEON	00319	2001
APACHE-SIT.	6	RUDD KNOLL	00618	2001
APACHE-SIT.	1	UTH ESCUDILLA	01210	2001
APACHE-SIT.	7	TOWN TANK	00035	2001
APACHE-SIT.	3	TULE	00324	2001
APACHE-SIT.	1	WILLIAMS VALLEY	00131	2001
CARSON	2	JAROSITA	210	2001
CARSON	4	RIO CHIQUITO	402	2001
CARSON	7	SAWMILL PARK	710	2001
CARSON	6	SERVILLETA	633	2001
CARSON	6	TRES OREJAS	637	2001
CARSON	3	VALENCIA	350	2001
CIBOLA	4	BARRANCA	04403	2001
CIBOLA	2	BRENNAN	02217	2001
CIBOLA	2	CROWDER LOW	02233	2001
CIBOLA	2	CROWDER REID	02236	2001
CIBOLA	3	GAP	03300	2001
CIBOLA	3	NORTH CANYON	03341	2001
CIBOLA	7	UNIT 103,146	07103	2001
CIBOLA	8	UNIT 118	08118	2001
CIBOLA	7	UNIT 23	07023	2001
CIBOLA	7	UNIT 27,32	07027	2001
CIBOLA	8	UNIT 75	08075	2001
CIBOLA	7	UNIT 84,136	07084	2001
CIBOLA	8	UNIT 97, 98	08097	2001
COCONINO	02	ANGELL	00104	2001
COCONINO	02	COSNINO	00021	2001
COCONINO	01	FOSSIL CREEK	00006	2001
COCONINO	05	WALNUT CANYON	00066	2001
CORONADO	D5	AGUA VERDE	00522	2001
CORONADO	D2	ALAMO	00217	2001
CORONADO	D3	Alisos	00353	2001
CORONADO	D4	BASS CANYON	00438	2001
CORONADO	D4	BAYLESS	00440	2001
CORONADO	D3	Benson	00303	2001
CORONADO	D4	BONITA	00424	2001
CORONADO	D2	CALABASAS	00216	2001
CORONADO	D3	Campini	00309	2001
CORONADO	D1	CLANTON/CLOVER	00137	2001
CORONADO	D3	Duquesne	00342	2001
CORONADO	D4	FOSTER	00406	2001
CORONADO	D5	HAPPY VALLEY	00518	2001
CORONADO	D4	HAWK HOLLOW	00414	2001
CORONADO	D3	Hayfield	00345	2001
CORONADO	D4	KANE SPRINGS	00405	2001
CORONADO	D3	Knear	00302	2001
CORONADO	D3	Lone Mountain	00326	2001
CORONADO	D2	MARIPOSA	00219	2001

CORONADO	D2	MARSTELLAR	00218	2001
CORONADO	D3	Mescal	00318	2001
CORONADO	D3	Middle Canyon	00306	2001
CORONADO	D2	MURPHY	00212	2001
CORONADO	D2	PENA BLANCA	00215	2001
CORONADO	D1	PINERY	00162	2001
CORONADO	D1	PRICE CANYON	00117	2001
CORONADO	D2	RAMANOTE	00214	2001
CORONADO	D5	RINCON	00524	2001
CORONADO	D2	ROCK CORRAL	00211	2001
CORONADO	D5	ROCK PILE	00523	2001
CORONADO	D1	ROUGH MOUN- TAIN	00146	2001
CORONADO	D3	San Rafael	00338	2001
CORONADO	D3	Sierra Tordillo	00341	2001
CORONADO	D2	SOPORI	00210	2001
CORONADO	D4	STOCKTON PASS	00418	2001
CORONADO	D3	U-D	00347	2001
CORONADO	D4	VEACH	00416	2001
CORONADO	D4	WEAR	00437	2001
GILA	07	C-BAR	703	2001
GILA	06	DEADMAN	606	2001
GILA	06	EAGLE PEAK	608	2001
GILA	07	HOO DOO	710	2001
GILA	09	JEWETT GAP	914	2001
GILA	04	KELLY	428	2001
GILA	04	PINE CIENEGA	415	2001
GILA	05	SHEPPARD	510	2001
GILA	07	TWIN SISTERS	718	2001
GILA	07	WHITE SIGNAL	721	2001
KAIBAB	2	DAVENPORT LK	6	2001
KAIBAB	2	HOMESTEAD	11	2001
KAIBAB	4	RAIN TANK	38	2001
LINCOLN	02	AGUA CHIQUITA	00411	2001
LINCOLN	02	BEAR CREEK	00400	2001
LINCOLN	01	EAST HALE LAKE	00508	2001
LINCOLN	01	FINLEY	00510	2001
LINCOLN	01	KUDNER	00119	2001
LINCOLN	02	LEWIS	00412	2001
LINCOLN	03	MCCOLLAUM	00311	2001
LINCOLN	01	SALAZAR	00128	2001
LINCOLN	01	VERA CRUZ	00132	2001
LINCOLN	01	WELCH	00134	2001
PRESCOTT	05	BOTTLE	00502	2001
PRESCOTT	05	GOAT PEAK	00508	2001
PRESCOTT	01	HITT WASH	00117	2001
PRESCOTT	01	JORDAN PASTURE	00118	2001
PRESCOTT	01	K4	00114	2001
PRESCOTT	01	WALNUT CREEK	00122	2001
PRESCOTT	01	WILLIAMSON VLY	00123	2001
SANTA FE	03	BEAR SPRINGS	00318	2001
SANTA FE	02	CHIKUITO	00218	2001
SANTA FE	05	COW CREEK	00508	2001

SANTA FE	06	LA CAJA DEL RIO	00606	2001
SANTA FE	01	LA PRESA	00106	2001
SANTA FE	01	LOS INDIOS	00111	2001
SANTA FE	05	OSHA	00516	2001
SANTA FE	03	PERALTA	00322	2001
SANTA FE	05	SOLDIER CREEK	00523	2001
SANTA FE	05	VALLE MEDIO	00525	2001